United States Court of Appeals
for the Second Circuit

APPENDIX

UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

77-7104

United States Court of Appeals

For the Second Circuit

DAVID E. ROLF,
Plaintiff-Appellant-Cross-Appellee,

against

BLYTH, EASTMAN DILLON & CO., INC.,
and MICHAEL STOTT,
Defendants-Appellees-Cross-Appellants,

and

AKIYOSHI YAMADA,
Defendant.

B P/S

On Appeal from an Order and Judgment of the United States District Court for the Southern District of New York

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JOINT APPENDIX

VOLUME II OF THREE VOLUMES

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Q Dasa.

A Yes. I characterize that as low quality.

Q Will you show me that, sir?

A Yes (indicating).

Q Yes, you are right.

Do you have any idea where that security was purchased?

A No.

Q Was it purchased at Eastman, Dillon?

A I cannot see it on this list as having been purchased at Eastman Dillon between May '69 and December '31, 1970.

Q I take it you were not aware of the fact that that security was purchased in Dr. Rolf's non-discretionary account at Hornblower, Weeks?

A I may have been aware of it at one time, I don't know.

Q If you knew it was bought at Hornblower, Weeks, wouldn't put it on that list, would you?

A This is David E. Rolf new security purchases, May 1, 1969 to March 31, 1971, and they were all purchases I found in all confirmation slips and I believe including securities purchased at other places besides Eastman Dillon

Q Including Hornblower, Weeks?

A My recollection is yes.

Q You knew that was a non-discretionary account?

A Probably at the time I did it I was asked to just rate the securities that were purchased by Dr. Rolf and, you know, I didn't distinguish for purposes of this list and I don't know if I did know or didn't know.

Q Do you know whether or not that list includes other securities purchased at Hornblower, Weeks by Dr. Rolf?

MR. SILVERMAN: Your Honor, I --

THE COURT: Do you know whether wherever purchased, other than Eastman Dillon -- do you know whether the shares were in the custody of Eastman Dillon? I am talking about the most recent shares referred to by counsel

MR. KELLY: These were never in the custody of EAstman Dillon, your Honor.

MR. SILVERMAN: Your Honor, we produced the schedule, we have all the confirmations and wouldn't it be more productive use of court time for counsel to brief in his post-trial brief that there were stocks on that list --

THE COURT: I think you should limit your inquiry to shares which if purchased through firms other than Eastman, Dillon are at least shown by some of those documents to have been in their custody during the period in question.

MR. KELLY: I seek to show, your Honor, at this time, the following: That Dasa Corporation is said to be, by the witness, lowest of the low --

MR. SILVERMAN: Objection. He did not say lowe of the low.

THE COURT: He said low quality.

MR. KELLY: I seek to establish whether or not the witness was aware of the fact that that security was purchased by Dr. Rolf in an account at Hornblower, Weeks in which Dr. Rolf was the one who placed the orders and which securities never came into contact with Eastman, Dillon in any way, shape, manner or form.

THE COURT: Well, then I sustain an objection to it.

Let's move this along now with this witness.

MR. KELLY: Could we have a five-minute recess, your Honor?

THE COURT: All right.

(Recess.)

MR. KELLY: I would like to offer in evidence RR and SS.

THE COURT: Any objection?

MR. SILVERMAN: May I see them again?

(Pause.)

MR. SILVERMAN: Your Honor, may I ask if TT i being offered also?

MR. KELLY: TT is in.

MR. SILVERMAN: I have no objection to RR and SS.

xxx (Defendants' Exhibits RR and SS were received in evidence.)

MR. KELLY: I would like to make an offer of proof, your Honor. I would like to examine the witness with respect to his rating of Data Network, but that, too, was a security, as was Dasa, that was bought by Dr. Rolf in his non-discretionary account at Hornblower, Weeks. I would take it your Honor's ruling would be the same on that one as it was with respect to Dasa.

THE COURT: If it was not held by Eastman Dillon or purchased for the doctor's account by them --

MR. KELLY: My purpose would be to offer them a evidencing what the investment objectives were of Dr. Rolf when he was doing his own --

THE COURT: I will sustain an objection to that.

MR. KELLY: No further questions, your Honor.

THE COURT: All right, Mr. Tessler.

CROSS-EXAMINATION

BY MR. TESSLER:

Q Mr. Whitman, do I take it there came a time whe you were asked by somebody to evaluate the stocks that were held in Dr. Rolf's portfolio between May of 1969 and March of 1971?

A Yes.

Q When for the first time were you asked to make that evaluation?

A I guess my first engagement in this matter would have been about two years ago, roughly -- maybe a year and a half ago -- and I believe it would be then.

Q Approximately somewhere in the middle of 1974?

A Or the beginning of '75.

Q Do Itake it you were asked by Mr.Silverman to make such an evaluation?

A That's correct.

Q Exactly what was the nature of your assignment given you by Mr.Silverman?

A It has been so long that it is difficult to be specific. One was rate the quality of the issuers, (2), was a churning question, and I guess (3) would be portfolio valuation.

Normally when someone gives me an assignment like that, he would get in touch with me and I would say l me see the complaint and other materials so I know what I am supposed to do.

Q Let's try to keep ourselves to the question of what you were asked to do in connection with rating the qu ity of the issues, all right?

A Yes.

Q What precisely were you told by Mr. Silverman at the time you were asked to rate the quality of issues?

A I can't recall.

Q Mr.Silverman gave you a list of stocks?

A Yes.

Q Did he tell you when the stocks were purchased

A I had the schedules.

Q So you knew when the stocks were purchased?

A Yes.

Q Did he tell you for whom the stocks were purchased?

A I had schedules showing Dr. Rolf's account and confirmations.

Q You knew they were purchased for a Dr. Rolf?

A That's correct.

Q In Cleveland?

A That's correct.

Q Did you know anything about Dr.Rolf?

A Other than what I would have read in documents, like the complaint, no.

Q What did you know about Dr. Rolf precisely, Mr. Whitman?

A I guess the precise thing I would know then would be how he was characterized in his complaint and his correspondence, his letters sent to Eastman, Dillon, or Mr. Stott.

Q Did you know how old he was?

A Yes.

Q How old was he?

A Sixty.

Q How did you know that?

A Probably Mr.Silverman told me, but I am not sur

Q Did you know the extent of his prior investment activity prior to 1969?

A Yes.

Q How did you know that?

A Probably Mr. Silverman told me.

Q What did he tell you?

A That he had been an account of -- that I know specifically, remember -- that he had been an account of

S. Sterling Logan since 1962 or the early 1960's and Mr. Logan had managed the account and when Mr. Logan became incapacitated Eastman, Dillon assigned the account to Mr. Stott. This is all recollection now. Mr.Stott was a young man and that Dr.Rolf was satisfied with Eastman, Dillon and would like an arrangement under which he could have the best of both Eastman, Dillon and an investment advisor, and it ended up that Dr. Rolf was investing with a Yamada-Stott team that was supposed to duplicate what Mr. Logan had done.

Q Who told you that?

A I guess Mr. Silverman, or the complaint -- you know, wherever --

Q Did you know at the time you made the evaluatic what Dr. Rolf's investment objectives were?

A I believe I had seen his letters. You know, he said at least as a primary objective, although not an exclusive objective, that he wanted a safeguarding of principal.

Q Did you know Dr. Rolf at the time you made the evaluation, he had talked about doubling his equity?

A That was in one letter.

Q Had you seen that?

A Yes.

Q Did you meet with Dr. Rolf prior to making the evaluation?

A No.

Q Did you attempt in any way other than your discussions with Mr.Silverman, your reading of the complain and your review of the documents to determine for yourself what Dr. Rolf's investment objectives were?

MR. SILVERMAN: Could we have the time period, your Honor?

Q At the time you first made an evaluation of the stocks in Dr. Rolf's portfolio.

A They are two separate things -- the answer to your question is no, but the quality of the issuer remains what it is no matter who the investor is.

Q Whether the quality is suitable, whether the issue is suitable, depends upon the investor's objectives, does it?

A In part, yes.

Q You said at the time you were asked to make yo evaluation you read the complaint.

A I am pretty sure I did.

Q Would you tell me why the complaint would have a bearing on your making an evaluation of the particular issues in a portfolio?

A It would have nothing to do with it.

Q You were interested, though?

A No, someone said "We would like to retain you to be involved in a matter," and any time an attorney calls me, before I will meet with the attorney I will ask him if he thinks that I have expertise -- I will ask him first to give me documents that I can read so that I can know what I am supposed to expertise about or, indeed, if I have any qualities, and I find one of the documents helpful to me is the complaint that has been filed.

Q At the time you made the evaluation you knew Dr. Rolf's investment advisor was Akiyoshi Yamada?

A Yes.

Q And I believe you testified in response to Mr. Kelly's question that in part your conclusion that the 15 securities which you have characterized as lowest of the low was conditioned on what you knew about Yamada, is that correct?

A I never knew Yamada, but what I knew about Yamada's investments, what he was recommending, yes.

Q What you knew about what Yamada was recommendin in part formed the basis for your conclusion that the securities purchased for Rolf were unfit for him, unsuitabl for him? Can you answer that yes or no?

A Not wholly. Where I had statistics and published materials, in those instances where things were not in the manuals -- not in the Moody's manual or Standard & Poor's, the answer is yes.

Q I believe you also said, and correct me if I am wrong, in evaluating the stock you took into effect what you knew about Yamada?

A What I knew about Yamada is what was in this indictment I had read in 1973, which went into the securities in which he was investing.

Q Was that one of the factors you took into consideration when you evaluated the stock?

A When I evaluated the portfolio?

Q Yes.

A Oh, yes, when there were no other material published about the company that I had access to.

Q I believe you also said if Yamada bought the stock, it was lowest of the low?

A I said that, yes, about the securities about which I had no statistical information to make judgment by my objective standards.

Q What did you know about Yamada?

A Nothing. In 1973 I had been involved in investing in a matter and one of the management of the company was an unindicted co-conspirator, if I have the words right, and in order to do research I ordered from the Washington Service Bureau the SEC file in connection with this matter and read their complaint.

Q What matter was that, sir?

A I guess it was U. S. against Yamada.

Q What stock was involved that is involved in this action?

A No stock that was involved in this action, except maybe this unindicted co-conspirator might have been specifically involved in Hair Extension, but that would be the only one that the person I was interested in had any involvement with.

Q Were you an investor in Hair Extension?

A No.

Q What else did you know about Yamada other than that he had been involved in a stock called Hair Extension which was the subject of an indictment?

A Another security had been mentioned.

Q What other security? Not what you guess, sir, what you recall?

MR. SILVERMAN: Your Honor, may the witness be allowed to answer without counsel beating on him and yelling at him? He is trying to give answers going back to 1973 about matters he was not asked about on direct and if he has to ask him about something that is three years old, can we have some patience?

THE COURT: Go ahead.

MR. TESSLER: Please read the question.

(Question read.)

A As I recall, issues such as Firefly, Delanair, in particular -- Creative Polymers would have been mentioned. I vaguely knew about them as I think I testified to Mr. Kelly's questions.

Q What did you know about Creative Polymers?

A Nothing. It is a name that --

MR. KELLY: I can't hear, your Honor.

A I knew it was one of the securities that Mr. Yamada and other people involved at that time were recommending, and that would be all.

Q Did you know if it had ever been alleged by the SEC or the Department of Justice that Creative Polymers was the subject of a stock manipulation?

A I believe I would have known that.

Q Did you know that or didn't you?

A I can't say specifically.

Q Is it your testimony, Mr. Whitman, it was your belief that Creative Polymers, a stock in which Dr. Rolf's money was invested, was the subject of a stock manipulation being run by Mr. Yamada?

MR. SILVERMAN: Objection. It has been asked and answered.

THE COURT: I will allow it.

A I can't say specifically.

Q Did you know to what extent, if any, Mr. Yamada was involved in the public underwriting of the stock of Creative Polymers?

THE COURT: How do you spell the second word?

MR. TESSLER: P-o-l-y-m-e-r-s.

A I can't testify to any specific knowledge at this point.

Q You had no knowledge then that Mr. Yamada was involved in the underwriting of Creative Polymers?

A I have no knowledge. I don't know if it is correct to say I had no knowledge. In '73 I was very interested and read what was published about Mr. Yamada's activities with a great deal of interest.

Q You testified that because Yamada was involved in a stock if you had no other information about the stock you rated it lowest of the low?

A If there was no other published information in

Moody's, Standard & Poor's, and if the December 1971 directory did not show the company as a filing company and Mr. Yamada was involved, yes, I did rate it lowest of the low.

Q Because of that reason alone?

A Those reasons.

Q Because of those reasons alone? If there was no information available, if it was not in Standard & Poor's, if there were no SEC reports, if it was not listed on an Exchange and if Mr. Yamada was involved, then you rated the stock lowest of the low?

A I drew the inference it was lowest of the low based on those indications.

Q Based on the fact Mr. Yamada was indicted for alleged manipulation of various stocks?

A Yes, plus the fact that these issues were not recorded -- that no information was recorded in normal stockholder publications.

Q Let's stay with Creative Polymers. Mr. Kelly said to you if there was a prospectus on that company, there would be public information, wouldn't there?

A Yes.

Q In fact, the information in the prospectus is far more expansive and inclusive than that contained in

Standard & Poor's, isn't that so?

A Yes.

Q Or in Moody's?

A Yes.

Q And you did not know, did you, that there was a prospectus on Creative Polymers at the point of time that that stock was purchased for Dr. Rolf?

A Oh, sure I did, because of -- if a prospectus was given out with the confirmations, it would be printed out with the confirmation. However, the fact that the issue then never gets picked up in any standard publication demonstrates that the size of the company had to be small -- or at least I drew the inference -- that there was no investor interest or marketability, otherwise Moody's and Standard & Poor's would have picked it up and then from that, plus Mr. Yamada's background, I drew the inference that these were lowest of the low.

Q Did you know when Dr. Rolf purchased Delanair that it was a private placement?

A Yes.

Q Did you know whether there was a private placement memorandum?

A No.

Q Did you ask?

A No.

Q So there may have been, for all you know?

A Yes.

Q If there was a private placement memorandum prepared by attorneys as competent as the Marshall, Bratter firm, it would have been inclusive, wouldn't it?

MR. SILVERMAN: Objection, your Honor.

MR. TESSLER: I withdraw that, your Honor.

Q With respect to M.H. Studios, was that a stock manipulated by Yamada?

A I don't recall.

Q What is your best recollection?

A I wouldn't even try on a specific stock.

Q Why did you rate that lowest of the low?

A Well, not in Moody's, not in Standard & Poor's, not a filing company with the SEC, I believe there was a Yamada recommendation.

Q WAs it a new issue?

A I don't know.

Q You don't know if there was a prospectus or not, do you?

A No, I don't. I would look at the confirmation and see if a prospectus was distributed.

Q At the time you made the list --

THE COURT: Excuse me, is the question whether he knows now or didn't know at the time he used the monthly statements and the confirmations?

MR. TESSLER: He made his evaluation.

THE COURT: You understand that?

THE WITNESS: Yes. I didn't know then.

Q You didn't know?

A Didn't know, didn't check.

Q Do you know whether or not M.H. Studios was the subject of a stock manipulation by Mr. Yamada?

A I don't know.

Q With respect to GPI, why was that stock rated lowest of the low?

A Again, not in Moody's, not in Standard & Poor's, no information.

Q Do you know whether that stock was a new issue at the time it was purchased by Dr. Rolf?

A No.

Q Do you know at that time whether a prospectus was available?

A No.

THE COURT: You didn't know then?

THE WITNESS: No. I didn't check, your Honor.

Q If you had looked at the confirmation, wouldn't that have told you?

A Yes.

Q Did you look at the confirmation?

A Yes.

Q When you looked at the confirmation for Creativ
Polymers didn't you see that it said "Prospectus enclosed"?

A If the confirmation said so, yes.

Q Did you ask to see the prospectus?

A No.

Q The fact that Mr. Yamada was involved was all you needed?

A Well, that is not entirely correct because it is very hard to get these prospectuses six or seven years later. It wasn't the functional type of thing to do for this type of study in light of the inferences I could draw.

Q Will you agree that if a prospectus was available at the time the stock was purchased Mr. Yamada could get that prospectus?

A Yes.

Q With respect to the stock of Monarch Industries, why was that rated lowest of the low?

A It wasn't.

Q What was it?

A Low.

Q I believe you said that for the outside passive investor who took reasonable and prudent risks the securities that you have rated lowest of the low were not suitable investments, is that correct?

A No, not precisely.

Q I am sorry, but according to my notes you said that for such an investor these securities are unsuitable, is that correct?

A That is correct, where they make up a significa part of a portfolio.

Q What is a significant part of a portfolio.

A For these type of securities? I would say over 20 per cent, or so.

Q What percentage of Dr. Rolf's portfolio did these securities comprise?

A I don't rightfully recall. I think it would be approximately a third, most of the time, the lowest of the low, whether measured by number of issues or dollar valuation.

Q Twenty per cent would be okay, a third is too much, is that your testimony?

A I think the SECin their rules under investment companies, diversified investment companies, sort of has a 25 per cent break, and I would be in that ball part, a 20 to 25, from what I know about the investment company standard, which is a reasonable standard.

Q Then you are saying that for an outside passive investor with a substantial portfolio, an investment of between 20 and 25 per cent in securities you label lowest of the low would not be untoward?

A If such an investor had a very strong objective of preservation of principal, that percentage would probably be high.

Q What if such an investor had as a very strong objective the objective of doubling his equity in a year?

A Then it could start to be suitable.

Q Such an investor as the investor that you have labeled the outside passive, non-controlled investor?

A That is correct.

Q Am I correct that in your evaluation of these stocks you made the assumption that Dr. Rolf was, as you have termed it, an outside passive investor?

A No. Making this evaluation, it made no difference who the investor was. The evaluation of the quality of these issuers would be the same regardless of the investor.

Q In determining that purchase of those types of securities that you have evaluated as lowest of the low is unsuitable, you are assuming,you are talking from the standpoint of a passive, outside investor?

A Oh, yes.

Q Did you assume Dr. Rolf was a passive, outside investor?

A Yes.

Q Not having met him?

A That's correct.

Q Based in part on what Mr.Silverman told you?

MR. SILVERMAN: Can we have a time frame, your Honor? In direct examination I wanted him to testify as to a recent meeting with Dr. Rolf.

Q At the beginning, 1974, 1975.

A I had never met Dr. Rolf.

Q Your assumption as to what type of an investor Dr. Rolf was was based in part on what Mr.Silverman told you?

MR. SILVERMAN: Objection, your Honor. He didn't prepare any test in '74 as to suitability, he just graded securities.

THE COURT: Sustained.

Q When did you determine that these securities which you have rated lowest of the lower were unsuitable for Dr.Rolf?

A I would think it would be in preparation for the trial here.

Q When?

A In between trips to California.

Q Last month?

A Yes.

Q Before then?

A That is hard to say. Before last month I had not done anything on this matter for a long time. I would suspect I did some thinking and some work on suitability back in '74 and '75. This exact thing here, however, on quality of the issuer, was prepared last month (indicating)

Q When you did the thinking about suitability in 1974 and 1975, you had not met Dr. Rolf?

A That is correct.

Q Your assumption that he was an outside passive, non-controlled investor was based in part on what Mr. Silverman told you?

A I couldn't say that.

Q What was it based on?

A Obviously from looking at the many statements, confirmations and monthly statements, and the complaint, without talking to Mr.Silverman, I would assume the man was not a marketmaker, not a professional on Wall Street, I knew he was a physician and I didn't think he was an insider in any of the companies he was investing in. I didn't have to talk to anybody to draw that inference.

Q WAs Mr. Yamada an outside passive investor?

A Not in my definition, no.

Q You knew Mr. Yamada was purchasing stock for Dr. Rolf?

A Yes.

Q Would your outside passive investor who applies the standards of suitability that you applied in rating these stocks tend to invest in what is popularly called blu chip securities?

THE COURT: Would you read that question, please?

(Question read.)

A No, I don't think so, necessarily.

Q In determining whether Dr.Rolf was in fact an outside passive investor, is it not so that one of the criteria you use is to look at what he is purchasing?

A No.

Q You are not interested in what he is purchasing?

A Not to define an outside passive investor.

Q No, to define whether he is an outside passive investor.

A I think whether or not one is an outside passive investor depends upon one's station in life and one's occupation. A full-time, if you will, professional on Wall Street is not an outside passive investor. The president of a company who owns stock in that company is not an outside passive investor --

THE COURT: Would you be one, sir?

THE WITNESS: No. I am a broker-dealer, your Honor.

Q You said that the stocks which you have rated lowest of the low are not suitable for purchase by a passiv outside investor?

A I think, to be explicit, I should state that those securities should not be a substantial portion of an outside passive investor's portfolio where that investor has at least as a partial objective preservation of principal.

Q In determining whether somebody should be termed an outside passive investor, then you don't care what he invests in?

A That's right. That doesn't go to his station in life.

Q You are saying that based on a man's station in life, that determines what type of investor he is or should be?

A No, it just determines whether he is outside and passive relative to investments or not. It is the same as if somebody else is an insder, somebody else is a market maker, somebody else is a broker-dealer.

Q If a man is outside and passive, if I understand you, you are saying that a substantial portion of his portfolio should not be invested in certain stocks rega less of what his objectives may or may not be?

A I don't think I said that.

Q Didn't you say that in the case of an outside passive investor a substantial portion of his portfolio should not be invested in stocks which you rate lowest of the low?

A I said where he has at least as a partial objective preservation of principal.

Q Have you ever met an investor, Mr. Whitman, who had at least as a partial objective the preservation of principal?

A Yes.

Q Have you ever met an investor who had at least as a partial objective losing all of his money?

A I don't follow -- I guess the answer is no.

Q I wouldn't think so.

THE COURT: Have you ever met an investor who didn't have at least as a partial objective the preservation of his capital?

THE WITNESS: Yes, I have, your Honor. I have met investors who say "I will play the game of odds and consequences. I don't care if I get wiped out. This is my stake to play with."

I think there are many outside passive investors who tend to be almost that single-minded, "I will take my chances to make money."

Q Was Dr. Rolf such a person in 1969?

MR. SILVERMAN: Your Honor, I object.

THE COURT: Yes. Without predicate, that is sustained.

MR. TESSLER: I don't understand the basis of the objection.

THE COURT: He says he didn't know Dr. Rolf, had not met him. If you want to lay predicate questions first, then you can put that question.

Q You didn't know Dr. Rolf in 1969?

A That is correct.

Q You didn't know Dr. Rolf in 1968?

A No.

Q You never discussed with Dr. Rolf what his investment objectives were in 1968?

A No.

Q Or in 1969?

A No.

Q Or when he retained Mr. Yamada?

A No.

Q So that you don't know of your own knowledge what risk Dr. Rolf was willing to take in order to double his equity, do you, sir?

MR. SILVERMAN: Objection. He goes '68, '69 and why doesn't he ask '75 and '76?

THE COURT: Assume the question addresses the years counsel has referred to.

THE WITNESS: The answer to your question is no, I can ascertain things from other than meeting people. I read in 1974 or so letters Dr. Rolf had sent to Mr. Stott outlining his investment objectives. I remember one where he says something like preservation of principal comes first or is paramount.

Q Do you know the date of that letter?

A '69 or '70.

Q Do you know that it was March or April of '70?

A I don't know specifically.

Q Assuming that it was, it is possible that Dr. Rolf had an entirely different objective a year earlier.

MR. SILVERMAN: Objection, your Honor, it calls for speculation.

THE COURT: Yes. Sustained.

Q Is a person who invests in private lettered stock somebody who is taking a substantial risk of not being able to market that stock?

A That depends. I can't give a simple answer.

Q If you take a company that is not well-seasoned not traded on an established Exchange, has no record of dividends, and has no consistent earnings pattern, a person who invests in private lettered stock of that company is taking a substantial risk that he won't be able to get his money back?

A You can't answer on that set of facts. Suppos that the private placement is something sponsored by a leading underwriter who is very successful, and suppose further that other investors are very sophisficated and knowledgeable, suppose further that very, very strong rights of registration attach to that issue, both demand rights and piggy-back rights, and if you want to postulate that scenario, I would say somebody buying into a private placement like that probably has a pretty good chance of getting his securities marketed. The whole thing is sui generis.

Q Suppose none of those factors existed, then would you say that person had a substantial chance of losin his money?

A Whether those factors existed or not, he would have a substantial chance of losing his money.

Q Do you know if any of those factors existed in the case of Delanair?

A No.

THE COURT: Does that mean "No, I don't know"?

A I don't know.

Q You don't know whether those factors existed?

A No, I don't know what the private placement situation was in Delanair.

Q In preparation for your testimony in this trial did you make an investigation into what the factors were with respect to Delanair in 1969?

A No.

Q With respect to Health Evaluation, which was a new issue, which you rated lowest of the low, do you believe that Dr. Rolf had a substantial risk of losing his money?

THE COURT: Which stock?

MR. TESSLER: Health Evaluation.

A I would have to say -- my only reason for hesitating is that the charts don't show what anybody paid for the stocks, but when I rate something lowest of the low, I would say that whatever the investment is there would be a very substantial risk of losing the entire investment.

Q Why did you rate Health Evaluation Systems lowest of the low?

A Again --

THE COURT: Are there any other documents you have here that you want to refer to in answering the question?

THE WITNESS: No. This was one of those issues where there was no disclosure in Moody's or Standard & Poor's.

Q You didn't see a prospectus?

A No, and I believe I knw it was a Yamada recommendation.

Q As a result of that, you rated it lowest of the low?

A Yes.

Q Did you know that Dr. Rolf made $16,000 in that stock?

MR. SILVERMAN: Objection.

THE COURT: Well, I will take the question, counselor, if you make a representation, and Mr. Silverman doesn't seriously question it.

MR. TESSLER: According to the documents I saw, Dr. Rolf's investment in Health Evaluation Systems produced a profit of $16,186 to him, and I so represent.

MR. SILVERMAN: The trouble is that with many of these stocks the doctor was in and out and in again, and they look at one thing and say there is $16,000, but there is stock left over at the end.

MR. TESSLER: There is no stock left over.

THE COURT: If you accept the representation with all its limitations, I will allow the question.

MR. SILVERMAN: All right, go ahead.

MR. TESSLER: Would you read the question back?

(Question read.)

A No.

Q Did you know that Dr. Rolf made 34,000 plus-dollars in a stock called GPI, which you rated lowest of the low?

A No, I didn't know that.

Q In determining Dr. Rolf's investment objectives did you deem it important to evaluate as of May 1, 1969 the quality of his portfolio as it existed on April 30, 1969?

A Yes.

Q I show you Plaintiff's Exhibit 7 --

A I am sorry, I answer that wrongly. I believe I deemed it important as of April 30, 1969.

Q Did you evaluate Dr.Rolf's portfolio as of April 30, 1969?

A Yes.

Q Are you looking at a piece of paper? Is that the evaluation you made?

A Yes.

Q May I see it, sir?

A Yes (handing).

MR. TESSLER: May we have thismarked for identification, your Honor?

xxx (Defendant Yamada Exhibit A was marked for identification.)

MR. TESSLER: Your Honor, may I have a couple of minutes to review this?

THE COURT: Yes.

(Pause.)

Q Did you prepare Defendant Yamada Exhibit A for identification?

A Yes, i did.

Q In evaluating the stocks in Dr.Rolf's portfolio as of April 30, 1969, did you use the same criteria that you used in evaluating his portfolio after April 30, 1969?

A Yes.

MR. TESSLER: I ask this be entered in evidence.

THE COURT: The last question was whether he used the same criteria?

MR. TESSLER: Yes, and he said he did.

THE COURT: Any objection?

MR. SILVERMAN: No, your Honor.

THE COURT: Received.

xxx (Defendant Yamada Exhibit A was received in evidence.)

Q Would you tell me, Mr. Whitman, on what basis you rate Penn Central stock as high quality and Asamera Oil stock as low quality?

A As I testified before, I did not want to use hindsight and I did not want to forecast the future as of the date of evaluation. As of April 30, 1969, Penn

Central Company was one of the largest industrial companies in the United States, with sales of a billion seven, assets of over six and a half billion, net profits after income tax of $90 million. The company had been incorporated in the 19th Century, had been public for a long time, had paid dividends since 1948. It had had a record of continuous profits for at least the prior five years. The stock was listed on the New York StockExchange, was a very, very actively-traded stock, and information about it was widely disseminated to the investing public.

Q So on April 30, 1969 --

A That was the situation.

Q That was a high quality stock in your rating system?

A In my rating system at that time as to quality of the issuer.

Q What happened to that stock?

A Its principal subsidiary went bankrupt.

Q Is it only coincidental that the stocks listed on the New York Stock Exchange are all listed as high quality stocks and the stocks listed on the American Stock Exchange are all listed as low quality stocks?

MR. SILVERMAN: Objection.

THE COURT: Yes, that is sustained. If you will look at the one at the bottom, under low quality, it has one on the New York Stock Exchange.

MR. SILVERMAN: It has several, your Honor. I see Scientific Resources marked low quality, I see --

THE COURT: The point is that it is sustained because there is one.

Q Is the fact that a stock is listed on the New York Stock Exchange make it a more apt candidate for a high quality rating?

THE COURT: As against the American Exchange?

MR. TESSLER: Yes.

A Yes, because of the listint criteria of both Exchanges. Companies listed on the New York Stock Exchang are larger and tend to be much more seasoned.

Q And older?

A SEasoned and older, yes.

Q By your criteria would it be more likely that a company, a new issued traded on the over-the-counter Exchange, would be more likely to be rated by you as low quality than an issue on the American Stock Exchange?

A Yes. Again, a new issue on the over-the-counte market is likely to be a smaller company, less seasoned, less investor information available, less likely to pay dividends for a long period, and you know, it would have less of the indicia of a high quality issue.

Q To recap, a company rated by you as not of high quality, it is your opinion that such a stock is less suitable for the outside passive investor than a company rated by you as high quality?

MR. SILVERMAN: Your Honor, I think the question was inadvertently misstated, if we could hear it again.

(Question read.)

A No.

Q No?

A No.

Q It is your testimony, isn't it, that companies rated by you as lowest of the low should not form a substantial portion of the portfolio of an outside passive investor, is that correct?

A Yes, who has at least as a partial objective preservation of capital.

Q We can't forget that, Mr. Whitman.

A I thought your prior question referred to individual stocks rather than composition of portfolio. I am sorry.

MR. TESSLER: No further questions, your Honor.

MR. KELLY: Your Honor, at this time I would like to move to strike the entire testimony of Mr. Whitman on the ground that the witness is testifying as an expert based and founded on critical matters not in evidence, and not admissible in evidence, as to which matters the defendants have no opportunity for confrontation or cross-examination.

Alternatively, I ask the Court to reexamine and reverse its initial determination qualifying the witness since it is now clear his testimony and opinion is founded on hearsay, on matters not before the Court, and on facts which if offered here in evidence wouldnot be admissible.

THE COURT: I am going to deny that. The witness has testified that he relied upon certain information which came to his attention with reference to Mr. Yamada, but he says he relied upon other factors as well. Very frankly, one of the lines of questions I have refrained from asking, but it has run through my mind, is whether his judgment about the particular matters inquired about would have been the same had he not been aware of Mr. Yamada's indictment and his connection with particular shares, and so forth. I am going to deny your application, counsel. These matters brought out on cross are all matters to be considered, however, in assessing the

the weight and value to be given to the witness' testimony, his expert opinion.

Anything further from this witness, Mr. Silverman?

MR. SILVERMAN: I have redirect, your Honor.

THE COURT: All right, go ahead.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Before the luncheon break you were asked questions by Mr. Kelly and shown Exhibits WW and XX in evidence and you were asked whether these exhibits showed the market had declined from the time you first made your turnover study until the conclusion of that turnover study period, and when we left for the luncheon break you were asked whether you could come up with your own document on that. My first question to you is, during the luncheon break did you return to your office and obtain Down Jones stock price indexes and Standard & Poor's indexes?

A Yes.

Q I show you a three-page document headed "Standard & Poor's trade and securities statistics, 1974 edition," an- asi you if this is the document you obtained during the luncheon break?

A Yes, it is.

MR. SILVERMAN: I ask that the document just described be marked as Plaintiff's Exhibit 18 for identification.

xxx (Plaintiff's Exhibit 18 was marked for identification.)

Q I ask you to look at Plaintiff's Exhibit 18 and can you tell us what was the Dow Jones stock price averages as of May 1, 1969?

THE COURT: Do you plan to offer this?

MR. SILVER: Yes, your Honor.

MR. KELLY: No objection.

xxx (Plaintiff's Exhibit 18 was received in evidence.)

THE COURT: The question is, looking at the --

Q Can you tell us what the Dow Jones index stood at as of the end of the month April, 1969?

A No, I can't. It just contains the high and low by month.

Q What was the high and low in April 1969?

A In April 1969, the high was 950.2 and the low w 917.5.

Q What was the high and low as of March 1971?

A As of March 1971 the high was 916.8 and the low was 982.4.

Q On the third page of Plaintiff's Exhibit 18 in evidence appears the Standard & Poor's 425 Industrial Stock index.

A That's correct.

Q Can you tell us what that index reveals for the month of April 1969?

A It is a monthly average of weekly indexes and in April 1969 the monthly average of weekly indexes was 110.7.

Q What was the average as of March 1971?

A 109.6.

Q What is meant by the term "Indexing Study"?

A That is where you adjust something for price change.

Q Did you index your turnover study?

A No.

Q Do you know whether under Rule N(1)(r) investment companies which make turnover studies index their study to the market?

A No, they don't.

Q In cross-examination you testified about certain standard information sources. I believe you mentioned Standard & Poor's, Moody's, and the SEC index, did you not?

A Yes.

Q Do you know what criteria are used in listing companies in such manual?

A Yes. To the SEC it is size and number of shareholders. I forget specifically which -- whether or not you have done certain undertakings for Moody's and Standard & Poor's, they would revolve around the size of the issue, investor interest in the issue and how marketabl the issue is.

Q Does a company which makes a public offering automatically thereafter become listed in Moody's or Standard & Poor's?

A No.

Q Do you in your practice of security analysis draw any inference from the fact that a company is or is not listed in one of the standard information manuals that you have described earlier?

A I draw an inference about the quality of the issuer whether or not it is listed or not.

Q What is the inference you draw?

A If it is not so listed, it is a quality issuer from the point of view of the outside passive investor.

THE COURT: Now, was that one of the criteria that you used, one of the previously enumerated criteria?

A Yes, your Honor.

THE COURT: Under information available to outside investors?

THE WITNESS: That's right.

Q In your cross-examination you were asked questions about the extent of the inclusion in a portfolio of what you have called the lowest of the low securities. In your opinion, would a portfolio consisting of approximately one-third of the lowest of the low be suitable for an investor who at least had as a partial goal the preservation of capital?

A Inclusion of that amount of securities of that type in the portfolio would be unsuitable for such an investor.

Q I want you to assume that there is a security no listed in Standard Poor's or Moody's or in the SEC index, that there is absolutely no information that you can get on this security and, further, that Mr. Yamada had nothing to do with the securities.

Based on those facts, would you be able to rate the stock?

A Yes,I would.

Q How would you rate the stock?

MR. TESSLER: Objection, your Honor. That is totally irrelevant.

THE COURT: I will allow it.

A I would rate the stock as lowest of the low.

THE COURT: Read the question back to me, please.

(Question read.)

THE COURT: All right. The answer was?

(Record read.)

THE COURT: All right.

Q If I asked you to make the same assumptions, namely, there was no listing of this company in any of the standard manuals and that you didn't know who was behind it, whether Mr. Yamada or anybody else, you just didn't know who was backing it, would you be able to rate the security?

A Yes, I would.

Q How would you rate such a security where there was no information about it and you didn't know who was behind it?

A Lowest of the low.

Q Mr. Whitman, in the overall management of a stock portfolio, what is the significance, if any, of taking a profit in a few stocks, where there is a profit to be taken, and holding onto stocks that have declined precipitously?

A There are certain customers' men, I would guess, who in endeavoring to please clients have some tendency to realize profits and let losses run and tell the client don't look at your unrealized losses, look to your realized profits, things are not too bad.

MR. KELLY: I move to strike that testimony as not responsive and purely speculative.

THE COURT: Strike it.

MR. SILVERMAN: No further questions, your Honor.

Your Honor did reserve to me the right to object to WW and XX in evidence, you said I would look the offer over the luncheon break, and these were the two pieces of paper and I do have an objection, your Honor. They cannot be read, I don't believe any part in this record, and I would ask that your Honor strike them from the record or that Mr. Kelly voluntarily agree to withdraw them, and I show them to your Honor --

THE COURT: Why don't we handle it in this fashion: They can remain in evidence if Mr. Kelly can at a later point during the trial substitute more reliable copies. Is that satisfactory?

MR. SILVERMAN: Your Honor, it is not the fact that the copy is not readable, it is just that the chart can't be read from month to month. It is done by year, not by month.

THE COURT: The only question I am concerned about, really, is its accuracy. You don't challenge its accuracy, you just say it has little utility?

MR. SILVERMAN: It has no utility. You can't tell what month of the year.

THE COURT: Then no harm is done?

MR. SILVERMAN: No harm is done.

THE COURT: You withdraw your motion to strike?

MR. SILVERMAN: Yes.

THE COURT: Any recross?

MR. KELLY: I have just a few questions.

RECROSS-EXAMINATION

BY MR. KELLY:

Q Who was this unindicted co-conspirator?

A A fellow name Hurwitz, H-u-r-w-i-t-z.

Q What was his relationship to you?

A We had, my clients and I, a position in a company called Federated Development Company, listed on the New York StockExchange. Mr. Hurwitz controlled a company called M.R. Hoge Corporation which made a tender offer for 51 per cent of the shares of Federated Development Company.

Q Was it from him you secured certain information regarding Yamada?

A No.

Q You never discussed it with Mr. Hurwitz?

A I don't think I ever spoke to Mr. Hurwitz about Mr. Yamada. I don't know if I ever spoke to him.

Q The only understandings you had as to Mr. Yamada were from SEC documents and indictments?

A That is substantially true. There may have been newspaper articles, but nothing person to person.

Q In other words, it was either in published forms, in papers, SEC filings, or an indictment?

A I think that is substantially correct, to the best of my recollection.

MR. KELLY: No further questions.

THE COURT: If there is nothing further of this witness, he may step down.

(Witness excused.)

THE COURT: We will resume tomorrow at 10:00 A.M.

(Adjourned to Wednesday, July 7, 1976, at 10:00 A.M.)

David E. Rolf

vs. 73 Civ. 2967

Blythe Eastman Dillon Co., Inc.
Akiyoshi Yamada & Michael Stott

New York, New York.
July 7, 1976 - 10:00 A.M.

(Trial resumed.)

THE COURT: Good morning.
Have we concluded with Mr. Whitman?

MR. SILVERMAN: Yes, we have, your Honor.

THE COURT: Call your next witness, Mr. Silverma

MR. SILVERMAN: Plaintiff calls Akoyishi Yamada to the stand.

AKIYOSHI YAMADA, called as a witness by the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Were you Dr.Rolf's investment advisor?

A yes, sir.

Q Approximately when did you commence to be Dr. Rolf's investment advisor?

A Yes, sir.

Q Approximately when did you commence to be Dr.Rolf's investment advisor?

A I would say beginning in the spring of 1969, late spring, I guess.

Q Who first contacted you about becoming Dr. Rolf's investment advisor?

A Mr. Michael Stott.

Q How did he contact you?

A Mr. Stott, I guess we met personally over this matter.

Q Do you recall what he said to you about his recommending you to Dr. Rolf as an investment advisor?

A Yes, sir. Mr.Stott related to me the fact that a gentleman in the firm of Eastman, Dillon by the name of Mr.Sterling, who was, I believe, an officer or an investment advisor in Eastman, Dillon, had passed away and that prior to his passing away, for a period of five or sixmonths, the Rolf account at Eastman Dillon was sort of in abeyance and that he knew Sterling and that he knew of the existence of this account and he felt that by helping Rolf get situated with an investment advisor that it would benefit Rolf and him, meaning Mr.Stott, through the acquisition of an account for commission purposes.

Q How did Mr.Stott say it would benefit him?

MR. KELLY: Excuse me. Your Honor, could I ask the witness to keep his voice up.

THE COURT: Would you speak a little louder, please?

THE WITNESS: Yes, sir.

Q How did Mr.Stott say it would benefit him?

A At the time of Mr.Sterling's death, and prior t it,and when Mr. Stott introduced me to the Rolf account, Mr. Stott was not accruing any commission business on that account. I believe whatever transactions occurred in that account were just accruing to the firm of Eastman Dillon. By placing Dr. Rolf with an investment adviser, Mr.Stott was to receive the commission business and also to receive a quid pro quo of additional commission business from other activities of whatever the investment advisor may be.

Q Did Mr.Stott tell you he was recommending only you or did he say he was recomming you and another person?

A Initially he told me he was speaking to somebody else as well as myself.

Q Do you recall the name of the person to whom he aaid he was speaking?

A Yes, sir. It was a gentleman named Donald Gedd

Q Did Mr.Stott at that meeting with you discuss whether or not he would receive the brokerage commission if he recommended you and you became Dr.Rolf's investment advisor?

A Yes, sir. It was understood that I would keep Rolf's account at Eastman Dillon and have Mr. Stott supervise and monitor it and he would receive the commissio business from it and, in addition to which, Mr.Stott was aware I was creating an investment partnership and that I was looking for other investment vehicles to manage and that he would accrue some commission business from that

Q You mentioned earlier a quid pro quo of other business. What did you have refered to?

A The idea was that Mr.Stott would help raise money for me aside form theRolf account --

MR. KELLY: I object and ask the answer be stricken, in the sense, as I understand what is being said, it is a conclusion, not conversations. If it is a conversation, that is something else again.

THE COURT: Sustained.

Q Did Mr.Stott tell you what he expected to receive from you in the event he delivered Dr. Rolf as a client?

A Yes, sir.

Q What did he tell you he expected to receive?

A Commission business.

Q From Dr. Rolf's account?

A From Dr.Rolf's account and other additional accounts that I managed.

Q Did you agree to give Mr.Stott commission business from Dr. Rolf's account if you obtained Dr. Rolf as an investment client?

A Yes, sir.

Q Did you agree to give Mr.Stott commission business from other accounts if you obtained Dr.Rolf as a client?

A Yes, sir.

Q Mhat if anything did Mr.Stott say about recommending you over Mr. Geddes based upon your agreement to give him commission business?

A After our initial conversations regarding my obtaining Dr. Rolf's account, he dropped the matter of Mr. Geddes being a potential on the investment advisor and, fact, Mr.Stott introduced me to Mr.Geddes and helped me obtain limited partners for the partnership that I was forming.

Q Did there come a time you met Dr. Rolf?

A Yes.

Q Approximately when did that meeting take place?

A I would say in the spring of '69.

Q Where did the meeting take place?

A Here in New York.

Q Did you discuss with Dr. Rolf your background in the securities industry?

A Yes, sir.

Q Did you tell him you had been with Kuhn, Loeb?

A Yes, sir.

Q Had you in fact been with Kuhn, Loeb?

A Yes,sir.

Q Did you discuss your period of employment with Kuhn, Loeb?

A Yes, sir.

Q What did you tell him about Kuhn, Loeb, if anything?

A I told Dr. Rolf that Kuhn, Loeb was an old line very prestigious investment bank, that it handled nothing but AAA clients, that it was extremely conservative, that in fact, it was so conservative that the firm didn't even have margin accounts, that individuals were discouraged from taking individual brokerage adcounts, and that, in general, it was one of the most well-established, old conservative Wall Street investment banking firms.

Q Did you discuss with Dr.Rolf some of your investment clients?

A I discussed with Dr.Rolf the fact that I was forming a partnership to which I had commitments from certain people.

Q Did you name the people from whom you had commitments?

A Yes,sir.

Q Who were they?

A I had commitments from people who subequently became limited partners, like Kieth Funsten --

Q What position did he have at the time?

A He was the former head of the New YorkStock Exchange.

Q Was Dr.Rolf aware of that?

A Well, yes, sir.

Q I am sorry, go ahead.

A Mr.John Burns.

Q What position did he have?

A I believe he was the former chairman of Cities Service and also the president of RCA, former president of RCA.

Q Did you tell Dr.Rolf what position Mr. Burns held?

A Yes,sir.

Q Anybody else?

A I believe Mr. J.Richardson Dilworth.

Q What position did he hold?

A He was the head of theRockefeller Brothers.

Q Did you tell that to Dr.Rolf?

A Yes, sir.

Q At your meeting with Dr. Rolf, did you discuss with him the formulation of a plan for the handling of his securities account?

A Yes,sir.

Q At your meeting wit h Dr. Rolf did he give you a clearcut picture of what he wanted done in his account?

MR. KELLY: I object,your Honor. I think the witness is now being led in areas in which the question should be put without reference to specific items.

THE COURT: Sustained, as to this question.

Q Did Dr.Rolf have much to say at the meeting?

A In fact, Dr.Rolf was confused and he was -- I guess the best way to describe it would be that he was groping for some sort of direction. He really needed guidance and he was just groping for advice.

Q Was it important for you at that meeting to determine whether Dr.Rolf was a sophisticated or unsophisticated investor?

THE COURT: Let me hear that question again.

(Question read.)

THE COURT: You can answer that yes or no.

A Yes.

Q What did you determine?

MR. KELLY: I object to that question.

THE COURT: I will allow it. You may inquire behind it on cross.

A That he was clearly unsophisticated.

Q Did you seek to obtain guidance concerning the handling of Dr.Rolf's account from any person or persons other thanDr.Rolf after your first meeting?

A Yes, sir.

Q To whom did you seek guidance?

A Mr. Michael Stott.

Q Did you call him?

A Yes,sir.

Q Can you recall, to the best of your recollection what he said to you and what yousaid to him?

A Well,Mr.Stott and I had innumerable telephone conversations but when we discussed Dr.Rolf, Mr.Stott reflected to me the fact that he want ed -- Dr.Rolf was interested in aggressive investments and that he felt with my background in special situations, and what have you, that I would fit the bill for managing Dr.Rolf's account.

Q Did he give you any reason why he could not keep that account at Eastman Dillon?

MR. KELLY: Your Honor, I object. The witness is being led. I think he should be asked what the conversation was and not focusing on pieces.

THE COURT: No, I am going to allow some focusing, but not to the point where it takes over totally and completely and suggests the answer. See if you can bridge between the two.

MR. SILVERMAN: I will do my best, your Honor. Thank you.

Q Would you answer the question, please?

A Could you repeat the question?

THE COURT: Instead of reading it back, why don't you reframe the question.

Q Did you discuss with Mr.Stott during the course of that telephone conversation any reason or reasons why Eastman Dillon could not serve as the investment advisor?

A Not to my recollection.

Q During the course of that conversation with

Mr.Stott did you discuss Dr.Rolf's investment objectives?

A Yes, sir.

Q What did Mr.Stott say about Dr.Rolf's investment objectives?

A He wanted it clearly understood that Dr.Rolf was interested in aggressive investments with a possible capital gains -- his interest was in capital appreciation.

Q That is what Mr. Stott told you?

A That is right.

Q When you met with Dr. Rolf did he give you instructions as to the trading of his account, by brokerage firm or firms you should use?

A Yes,sir.

Q What did he tell you?

A Dr.Rolf made it clear that he wanted the account at least at the onset, to remain at Eastman Dillon, and the reason for that was he felt Eastman Dillon was a substantial house and he didn't want -- expressed fears regarding the financial stability of other houses on Wall Street and he felt Eastman Dillon was as good as any in that regard and he wanted the account kept there.

Q Did you have a discussion with Dr.Rolf about the role, if any, which Mr.Stott and Eastman Dillon were to play in the handling of Dr.Rolf's account?

A Yes,sir.

Q Would you give us, to the best of your recollection, the substance of that conversation?

A Mr.Stott was to be informed of all the activitie in the account and he, in effect, was to monitor this account. One of the guidelines we laid out specifically was that if I were to do any trading with another house that a confirmation slip be sent directly to Mr.Stott, as opposed to just the stock being delivered to Eastman -- a third confirmation slip would be specifically sent to Mr. Stott, was from Eastman Dillon, so that he would know exactly what was going in and out of the portfolio.

Q Did Dr. Rolf tell you it was his wish that Stott and Eastman Dillon monitor his account?

A Yes, sir.

Q Did you confirm with Mr.Stott whether in fact Stott and Eastman Dillon were to monitor the account?

A No question about it.

Q When you began to serve as Dr.Rolf's investment advisor, did you make any decisions as to the sale of securities then in his portfolio?

A Yes,sir.

Q Did you consult with anybody about your decisions

A Yes, sir.

Q With whom did you consult?

A Mr. Stott.

Q What did the two of you decide?

A We decided that a substantial part of the portfolio needed to be sold and the portfolio needed to be restructured.

Q Did Mr.Stott recommend securities be sold?

A Certain ones, yes,sir.

Q Did he state any investment reason for the sale of those securities?

A Well, one of the things, by selling the portfolio it accomplished two things: First of all, it gave me an opportunity to start with a reasonably clean slate and also there would be an immediate benefit to Mr.Stott of the commissions we derived from the existing portfolio.

Q Did Mr.Stott mention the latter benefit to him as a result of the sale?

A Yes,sir. The initial transactions Mr.Stott wanted done through Eastman Dillon.

Q Did Mr.Stott tell you at that time that he was interested in commissions?

A Yes, sir.

Q Did he tell you he wanted those stocks sold so that he could realize commissions?

A Well, he wanted --

THE COURT: Why don't you ask him what did Mr.Stott tell him in that record and then it is his testimony instead of your testimony.

Q What did Mr.Stott tell you in that regard, Mr. Yamada?

A Mr.Stott was in favor of my liquidating a significant amount of the portfolio and he stated that he wanted the commission business from that.

Q Did you agree to sell the stocks?

A Yes.

Q Did you agree to sell any of the stocks that wer sold for reasons other than investment decisions?

A Yes,sir.

Q What were the other reasons?

A To raise cash to buy other securities.

Q Any other reason?

A Not to my recollection.

Q Was there a reason to create commissions for Mr. Stott?

MR.KELLY: Objection to that question.

THE COURT: Yes, sustained.

Q Did Mr.Stott offer any reasons for the sale of the stock?

THE COURT: Haven't we just been through that?

MR. SILVERMAN: Yes, I think we have, your Honor.

Q In 1969, when you served as Dr.Rolf's investment advisor, did you make investments in his account?

A Yes, sir.

Q Did you consult with anyone about the investments made in his account?

A Yes, sir.

Q With whom did you consult?

A I consulted with MichaelStott and other investment brokers.

Q Did MichaelStott make any recommendations as to securities which should be purchased in the account?

A Yes, sir.

Q Mr. Yamada, I show you Defendants' Exhibit BB in evidence and I refer you to a page entitled "Page 1 of 2," headed "Dr.David E.Rolf, stock purchase journal, 1969," and I ask you if by looking at that page you can identify for us the stocks that were recommended by Mr.Stott?

A Yes, sir.

Q Which stocks were recommended by him?

A Well,Asamera Oil --

Q Excuse me for one minute.

(Pause.)

Q Go ahead. Asamera Oil?

A Yes, sir. Simplex Wire & Cable, Standard Oil of New Jersey --

THE COURT: These are stocks recommended by Mr.Stott to be purchased or sold, which?

MR. SILVERMAN: To be purchased, your Honor.

A Reading & Bates, Carter Wallace Corporation, Food Fair Properties, Intertherm, Inc., and I believe Equity Funding.

Q Do you recall what --

A Also West Coast Production Company, Ltd.

Q Do you recall what Mr. Stott told you about West Coast Production Company, Ltd?

A Yes, sir.

Q What did he tell you?

A Well,West Coast Productions was a nanadian Oil producer that he had an intimate knowledge of through family contacts and he said that he knew personally the head of West Coast Production, a man named MacMahon, I think was his name, and that he could monitor the situation closely. I believe there was a secondary offering of West Coast Production stock in which Eastman Dillon participated and that is how part of the investment was made.

Q Was the investment a purchase on a public offering?

A I believe some of it was and the other was -- some of the other stock was bought in the off-market.

Q Did Mr. Stott represent to you that he had any expertise in the oil and gas industry?

A Yes,sir.

Q Did he tell you the basis for his expertise?

A Yes, sir. First of all, I was not very knowledgeable about the oil and gas business and Mr.Stott's family -- he told me his father -- and I subsequently confirmed this -- was an executive of Standard Oil of New Jersey and that he had as his clients extensive lists of people who were from the oil and gas industry, executive and because of that he was in a position to find out information.

Q Did Mr.Stott tell you that he had such information about Asamera?

A Yes, sir.

Q And about Standard Oil of New Jersey?

A Yes, sir.

Q And about Reading & Bates?

A Yes, sir.

Q What about Simplex, what did Mr.Stott tell you, if anything, about Simplex?

A Well,Simplex Wire & Cable, Mr.Stott urged me to buy it and actually urged me to buy more because of his father's involvement in it.

Q How did he tell you his father was involved?

A His father became the president, Ibelieve, led a group of investors that took a controlling interest in Simplex.

Q Going down this same page -- and did you approve of the recommendations made by Mr.Stott?

A Yes.

Q And you acted upon his recommendations?

A Yes,sir, that is correct.

Q And you placed the orders based on --

MR. KELLY: Objection, your Honor.

THE COURT: I will allow this.

Q In which firm did you place the orders to purchase the stocks recommended by Mr.Stott?

A Eastman Dillon.

Q I notice on that same page, Defendants' Exhibit BB, the page entitled "Page 1 of 2," there is reference to a purchase of Consolidated Oil & Gas through the firm of Lynch, Jones & Ryan, is that correct?

A Yes, sir.

Q Did you place that order in Lynch, Jones & Ryan?

A Yes, sir.

Q What was your reason for placing the order in Lynch, Jones & Ryan?

A I had an office at Lynch, Jones & Ryan for a while and a person connected with Lynch,Jones & Ryan introduced me to Mr.Stott and I needed to generate commission business to give to Lynch,Jones & Ryan.

Q Did you discuss the opening of that account with Mr.Stott?

A Yes, sir. Mr.Stott and I discussed the fact that I had to give commission business to Lynch, Jones & Ryan and this was one of the few brokerage houses that he was amenable to sharing commission business with.

Q I see on this same page there was a transaction with the firm of Kordich, Victor & Neufeld. Was that an account that you opened?

A Yes, sir.

Q Did you discuss the opening of that account with Mr.Stott?

A I don't recall, sir.

Q What was the reason for opening an account at

Kordich, Victor & Neufeld, if you recall?

A. They were the house behind the stock of Funeral Homes of America.

Q When you say "behind the stock," you mean they were making a market in the stock?

A They were making a market and I believe they had an investment banking relationship with the company.

Q Was Funeral Homes of America one of your recommendations?

A Yes, sir.

Q Did you recommend that stock based upon the investment merits of Funeral Homes of America?

A Yes, sir.

Q How old a company was Funeral Homes of America, how long had it been in business?

A My recollection is it was relatively new.

Q In relation to the securities market as a whole, how would you characterize its assets, would you say they were large, medium or small?

A This was a highly speculative investment.

Q Did you discuss the investment with Mr. Stott?

A I don't recall.

Q International Funeral, that was a security that was purchased at Eastman Dillon, is that correct?

A Yes, sir.

Q Did you discuss that investment with Mr.Stott?

A My recollection is that International Funeral Homes was either a new issue or a secondary that Eastman Dillon participated in and I took a -- made an investment in that because of that.

Q Did Mr.Stott recommend that stock to you?

A Yes, sir.

Q I see that there is Intertherm, Inc., purchased at Eastman Dillon. Did you recommend the purchase of that stock?

A No, sir.

Q Who did?

A Mr. Stott did.

Q Was that a relatively new company, Intertherm?

A Yes, sir.

Q About how old, Mr. Yamada?

A I don't recall, but it was relatively new. It was a company that was a supplier to the mobile home industry.

Q Would you classify that security as a highly speculative one?

A Yes, sir. My recollection is that I believe that was also a new issue.

Q Was Eastman Dillon part of the syndicate in that issue?

A Yes,sir, I believe so.

Q And Mr.Stott recommended it?

A Yes, sir.

Q I see there is a purchase of Monarch Industries at Lynch,Jones --

THE COURT: Excuse me one moment.

(Pause.)

THE COURT: Who recommended the purchase of Intertherm, you or Mr.Stott?

THE WITNESS: Mr.Stott.

THE COURT: Thank you.

Go ahead.

Q On that same exhibit, BB, there is reference to a purchase in Monarch Industries through Lynch, Jones. Did you discuss the purchase of Monarch Industries with Mr. Stott?

A Yes, sir.

Q What was your reason for discussing it with Mr.Stott?

MR. KELLY: Objection.

THE COURT: I will allow it.

A The primary reason was that Monarch Industries was a substantial investment as a percentage of the total portfolio, almost a quarter of a million dollars, and Mr.Stott was worried that I was beginning to tie up too much of the portfolio and he wanted to know about Monarch, and he also felt that he needed to know because he might be asked by Dr.Rolf as to what the company did, etc.

Q Did Mr.Stott approve the investment in Monarch?

A Well, I made the investment decision and I told Mr.Stott about the company after being questioned by Mr.Stott and I don't know if "approval" is the right word.

Q Did he express dissatisfaction with the investment?

A No, not really, not after I spoke to him about it.

Q On page 2 of 2 on Exhibit --

THE COURT: When was this discussion about the size of the investment, after the investment decision had been made and implemented? Ask that question, Mr. Silverman.

Q Do you recall when you discussed Monarch Industries with Mr.Stott?

THE COURT: You have indicated that there was upwards of a quarter of a million dollars investment and Mr.Stott was concerned that there might be inquiries from the plaintiff concerning an investment of that size. Was that discussion on the part of Mr.Stott after the investment decision had been made and after the order had been placed?

THE WITNESS: Your Honor, twice I purchased the stock. The initial purchase was in excess of $100,000 and I intended to purchase some more again in June -- well, shortly thereafter, and that is when we had our discussion.

THE COURT: Did you purchase some again?

THE WITNESS: Yes, your Honor.

THE COURT: How much was that?

THE WITNESS: I purchased $112,000 worth.

THE COURT: So that the discussion you referred to took place between those two purchases?

THE WITNESS: Yes, sir.

Q On page 2 of 2 of Defendants' Exhibit BB in evidence there is recorded a purchase in the stock of M.H. Studios, Inc. Did you recommend the purchase of that stock?

A Yes, sir.

Q Did you do so based upon the investment merits of the company?

A No, sir.

Q What was the basis for your purchase of M.H. Studios, Incorporated?

A The fact of the matter was that M.H. Studios was a shell corporation that had been manipulated in terms of price and Rolf had given indications to myself and to Stott that he was unhappy with certain of the investment decisions and this was an opportunity for me to appease him by giving him a profit in a stock.

Q Did you give him a profit in the stock?

A To the best of my recollection, yes.

Q How did you go about giving him a profit in the stock?

A I placed an order in his account and then in turn bought the stock out of his account in another account.

Q At a higher price?

A Yes.

Q That was to appease Dr.Rolf?

A Yes, sir.

Q Did you discuss the purchase of M.H.Studios, Inc. with Mr. Stott?

A Yes.

Q What did you tell him about that security?

A I told him the stock was going up, there was a box on it, there was no problem as far as the stock collapsing and this was a chance for Rolf to make some quick money.

THE COURT: Did you have the box?

THE WITNESS: Yes, sir -- I did not, but some friends of mine did.

Q The word "box," was that a word of art on Wall Street at the time?

A Yes, sir.

Q What did it mean?

A That means the control of a substantial amount of the publicly-held shares.

Q Did Mr. Stott express any dissatisfaction with your purchase of M .H.Studios?

A No, he didn't say anything.

Q I show you Defendants' Exhibit CC in evidence and direct your attention to page 4 of that exhibit. Can you tell us whether any of the stocks that appear on that page were purchased based upon the recommendation of Mr. Stott?

A Yes,sir.

Q Which stocks?

A Natomes, and Simples Wire & Cable, and I also believe Teledyne.

Q Do you recall what Mr.Stott told you about

Natomes Company?

A Yes, sir. Natomes was part of the Indonesian Oil play that was very active at that time and Mr. Stott -- I felt Mr.Stott had an inside paper line into the situation --

MR. KELLY: I object to that and move it be stricken from the record, what the feeling of the witness might have been.

THE COURT: Well, no,given the previous testimony of discussions about stock and the father, I will allow it. There is a basis for it to remain in the record.

A -- that Natomes was part of the Indonesian Oil play --

THE COURT: Oil what?

THE WITNESS: Play.

THE COURT: P-l-a-y?

THE WITNESS: Yes, sir.

A -- and that Mr.Stott had a good deal of knowledge in this area and some first-hand information, and because of that I purchased that stock, and also at that time I was looking for certain liquid and volatile stocks to trade in so that I might generate some commission business, and Natomes happened to fit the bill.

Q For whom did you want to generate the commission business?

A Mr.Stott.

Q What was your reason for wanting to generate commission business for Mr.Stott?

A Well, in 1969 there were two significant portfolio purchases, one was a private placement in a company called Delanair, Inc., and another one in the Monarch Industries bonds, and between the two of them close to $600,000 of the portfolio was tied up, so to speak, and this made a significant amount of the portfolio reasonably non-liquid and I needed to generate as much of -- I was looking for stocks to buy and sell safely, generating commissions, but not accruing any losses, and Natomes fit that bill.

Q Were the remainder of the stocks listed on the page your recommendations?

A Yes, sir.

Q Did you discuss each of those securities with Mr.Stott?

A I discussed some of those securities with Mr.Stott.

Q How about Delanair, Incorporated, did you discuss that with Mr.Stott?

A Well, I told Mr.Stott it was a private placement and the basis for it, yes, sir.

Q And you told him it was restricted stock?

A Yes, sir.

Q Did you tell him that you had some promise for a secondary?

A Yes,sir.

Q GPI Enterprises, Inc., I see that was purchased through Woodcock.

A Yes, sir.

Q Did you discuss the purchase of GPI Enterprises with Mr. Stott, the purchase made through Woodcock?

A Yes, sir, very definitely.

Q What was your reason, if any, for purchasing GPI Enterprises through Woodcock?

A GPI was a new issue, I guess was a Reg.A issue, a company raising less than 300,000 -- $300,000 or less in the public market. I was aware it was going to be an extremely hot stock and there would be a premium on the opening. I wanted Dr. Rolf to get some of this stock for possible profit and I asked Mr.Stott to have Eastman Dillon participate in the underwriting. He told me that Eastman Dillon -- that he couldn't get the permission of Eastman Dillon syndicate department to participate in a Reg.A, particularly with the underwriter on the cover of the prospectus. So I went ahead and opened an account for Rolf at another brokerage house.

Q That was the Woodcock firm?

A Yes, sir.

Q I see you also purchased 2000 shares of GPI Enterprises from Eastman Dillon. Was that purchase made in the After market?

A Yes, sir.

THE COURT: They were purchased via Eastman Dillon, correct?

THE WITNESS: Yes, sir.

THE COURT: Via Eastman Dillon?

MR. SILVERMAN: Yes, that is correct, your Honor.

Q The initial purchase of GPI was at the public offering price?

A Yes, sir.

Q That price was $5 a share?

A Yes, sir.

Q Can you tell us what the GPI stock was purchased for on a per share basis in the after market from Eastman Dillon?

A About $10.50.

Q How long after the initial purchase was the second purchase made through Eastman Dillon?

A One month.

Q Did you discuss the purchase of GPI Enterprises with Mr.Stott?

A Yes, sir.

Q Was he familiar with the nature of GPI Enterprises and its business activities?

A Well, he knew that it was a hot stock and that I was buying more in the after market. He also -- I told him it was a company I was very close to, that I was very close to the underwriter and that we intended to take the stock substantially higher.

Q Did you have a box on GPI Enterprises?

A Yes, sir.

Q Did you tell that to Mr.Stott?

A I told Mr.Stott that we controlled the stock, yes, sir.

Q The next security is Hair Extension Centers --

THE COURT: Just a moment, please.

(Pause.)

Q The next stock is Hair Extension Center, and that reflects it was purchased at Eastman Dillon and my question to you is, did you discuss the purchase of Hair Extension Centers with Mr.Stott at or about the time you purchased it?

A Yes,sir.

Q Do you recall what you told him about Hair Extension Centers?

A Yes,sir. He asked me about Hair Extension Centers, because of the peculiar name, and I told him we had a box on the stock andRolf was not going to get hurt on it.

Q What did Mr.Stott say?

A "Fine."

Q The next security is Health Evaluation Systems, Inc. Was that purchase also made at Eastman Dillon?

A Yes,sir.

Q Was that made on your recommendation?

A Yes, sir.

Q Did you consult with Mr.Stott before you purchased it, or at about the time you purchased it?

A Yes, sir, we talked about it.

Q Do you recall what you told him about Health Evaluation Systems, Inc.?

A Yes, sir, that, again, it was a stock that we controlled and that it was going higher.

Q You told him you had a box on it?

A I don't know if I used the word "box." But I did reflect the fact that it was going to go higher.

THE COURT: Did you have a box on it?

THE WITNESS: Yes, sir.

THE COURT: Who had the box?

THE WITNESS: Myself and my associates.

Q On Exhibit CC it is reflected you purchased 2000 shares of Holobeam from Eastman Dillon in January 1970. Did you discuss the purchase of that stock with Mr. Stott?

A I don't recall.

Q What business was Holobeam in?

A It was in the laser business.

Q Was that a stock you would classify as highly speculative?

A Yes,sir.

Q Kenton Corporation, that was a stock also purchased at Eastman Dillon, is that correct?

A Yes,sir.

Q Do you recall discussing the purchase of that stock with Mr.Stott?

A I have no recollection, sir.

Q Milgo Electronics Corporation, do you recall discussing that with Mr. Stott?

A I don't recall.

Q And Natomes was Mr.Stott's recommendation?

A Yes, sir.

Q Outlet Corporation, was that your recommendation?

A Yes, sir.

Q Did you discuss the purchase of Outlet Company with Mr.Stott?

A Yes,sir.

Q Do you recall what you told him?

A I am sorry, I missed your initial question.

Q Did you discuss the purchase of Outlet Company with him?

A I am sorry, I don't recall whether I did or not.

Q Synchronex Corporation, did you discuss the purchase of Synchronex Corporaton with Mr. Stott?

A Yes, sir.

Q Do you recall what you told him?

A Yes, sir. I told Mr.Stott that this seemed like a very exciting investment, that it was a company that had high speculative appeal in the photographic industry.

Q Do you recall what Mr.Stott said?

A No, I don't have a recollection.

Q Did he express dissatisfaction over the investment?

A No,sir.

Q Synchronex was purchased through Eastman Dillon?

A That's right.

Q Tele Communications, Inc., did you discuss the purchase of that security with Mr.Stott?

A I have no recollection.

Q Teledyne, you have already testified was recommended by Mr.Stott, is that correct?

A I believe that was a new issue.

Q What did Mr.Stott tell you about it?

A It was a very hot new issue which Eastman Dillon had a small allocation on and he gave Rolf some stock.

Q Did he tell you anything about the company?

A I don't recall.

Q Did you know whether it was a highly speculative company or a well-established company?

A I just don't recall.

Q Visual Sciences, Inc., was that purchased at your recommendation?

A Yes,sir.

Q That was purchased through the firm of Provident Securities, is that correct?

A Yes,sir.

Q Did you request that Dr.Rolf open an account at

Provident?

A Yes, sir.

Q What was the reason for opening an account there?

A Visual Science was a very hot new underwriting and, again, Provident Securities was a very small, over-the-counter house, and Eastman Dillon would not participate in the underwriting.

Q Did you have a special relationship with Provident Securities?

A Yes, sir.

Q What was the nature of that relationship?

A They did a lot of underwritings in stocks that I had an interest in.

Q I see that again in the after market there was a purchase of Visual Science through Eastman Dillon.

A Yes,sir.

Q Did you discuss the purchase or Visual Science, Inc., with Mr.Stott?

A Yes,sir, he was aware of the purchase.

MR. KELLY: I object, your Honor, and move to strike.

THE COURT: Strike it.

Q Would you tell us what Mr.Stott said to you when you discussed Visual Science, Inc. with him?

A The initial discussion concerned the fact I wanted Dr.Rolf to purchase the stock through Eastman Dillon but Eastman Dillon would not participate in the underwriting I also told Stott I was going to buy stock in the after market, which I subsequently did, and I did that through Eastman Dillon -- I told him I would do it through Eastman Dillon.

Q Did Mr.Stott express any dissatisfaction with the purchase of Visual Science, Inc., from the after market?

A No, sir.

Q Did he express any dissatisfaction with the purchase of Visual Science, Inc., on the initial offering?

A No.

Q The next is Tranquilaire Mental Health. Was that one of your recommendations?

A Yes,sir.

Q Did you buy that stock because of the investment merits of the security?

A No. It was supposed to be a hot new issue.

Q Did you have a box on that stock?

A I don't believe so.

Q Did you discuss the purchase of that stock with Mr.Stott?

A I don't recall.

Q You purchased it through Woodcock?

A Yes, sir.

Q What was your reason for purchasing that stock through Woodcock?

A Because Eastman Dillon would not handle the account.

Q How did you know that?

A My discussions with Stott.

Q International Health Sciences, was that stock purchased at your recommendation?

A Yes, sir.

Q Did you buy that stock because of its investment merits?

A No, sir.

Q What was your reason for buying it?

A We were trying to accomplish an underwriting.

Q Was that a new offering?

A I don't recall if it was a new offering or stock that I bought in the after market immediately after the new underwriting.

Q Did you discuss the purchase of International Health Sciences with Mr.Stott?

A I don't recall.

Q I show you Defendants' Exhibit DD in evidence and direct your attention to page 3 of that exhibit and I ask you whether any stocks that appear on that page, which is headed "stock purchase journal," were purchased at your recommendation?

A No, sir.

Q How about Firefly Enterprises?

A Oh, yes,sir. Yes, sir, there were two of them, there is Falcon Seaboard, Inc., I believe was my recommendation, and alsoFirefly Enterprises.

Q Other than those two securities, you made no other recommendations or purchases for Dr.Rolf's account in 1971, is that correct?

A Yes, I believe that is correct.

Q During the time when you served as the investment advisor for Dr.Rolf, did Mr. Stott ever complain to you about the quality of the securities being purchased in the account?

A He complained to me about the fact that he was not getting enough commission business.

Q Was that his sole complaint, he wasn't getting enough commission business?

A I would say that was his principal complaint.

Q Did he complain to you on more than one occasio about his commission business?

A Yes,sir.

Q On how many occasions?

A On innumerable occasions.

Q How did he register the complaint, over the telephone or in person?

A He did both.

Q Did he ever come to your office and complain?

A Yes, sir. We had a very heated argument once in our office.

Q Would you describe the nature of the discussion at that heated argument in your office?

A Mr.Stott came to the office, he called saying he wanted to talk to me about something, he came up to the office and got very volatile, loud, saying he wasn't getting a fair share of the commission business generated in Rolf's account.

Q Did he say anything else to you?

A Yes, sir. One of the things was that he at that time expressed the fact that some of the stocks that were being purchased were not particularly of investment grade quality and that he felt he had a relationship with Rolf by then and that he could have that account pulled from me if I didn't further cooperate.

Q Can you recall the exact word that he used when he described the securities that were in the account?

A Junk.

Q Was that the word he used?

A Some of the securities were junk.

Q Is it your testimony that he told you that unless he got more commission business he was going to tell Dr.Rolf about the junk?

A Yes,sir.

Q Did you give him some commission business to keep him quiet?

A I tried to.

Q Were you able to keep him quiet?

A Well, I wasn't able to convince Mr.Stott not to ask me for more commission business, but what he did do, he began to act as an intermediary betweenRolf and myself.

Q Did Dr. Rolf register any complaints with you about the quality of securities being purchased in his account?

A He didn't until the losses started.

Q So then he did, after there were losses, is that correct?

A Yes,sir.

Q What did he tell you about the stocks? Did he complain about them?

A He complained about them because he had never heard of them and he thought they were highly speculative.

Q Did you have a procedure for handling Dr. Rolf's complaints when he called you to complain about the quality of the stocks?

A Well, in the latter stages of my handling Dr. Rolf's account, whenever Dr.Rolf called me, I would subsequently call Mr. Stott and have Mr.Stott call Dr.Rolf to hold his hand.

Q Did you make any attempt to pacify Dr.Rolf?

A I tried to by trying to give him new issues and trying to make some profits for him.

Q Were the profits that you made for him an effort to pacify him?

A Oh, yes.

Q In your overall business activities during that period what was the importance of Dr. Rolf's account to you?

A Buying power.

MR. KELLY: I didn't hear the answer.

THE WITNESS: Buying power.

Q When you didn't need Dr. Rolf's buying power did you allow Mr.Stott to trade the account?

A No,sir.

Q When did you first meet Mr.Stott?

A I guess it was very early in '69.

Q During the period of time when you were Dr. Rolf's investment advisor how often were you in contact with Mr.Stott?

A Innumerable times. My recollection is not particularly clear on this, but I somehow recall that we may even for a while have had a direct line between his office and my office. If we didn't, then we spoke at least 10, 15 times a day.

Q Did Mr.Stott tell you about any procedure that he had instituted in his office for when you would call?

A Well, if Michael was not at his desk, I would speak to his secretary and she would make every effort to locate him and Michael would either get back in touch with me immediately or would come to the telephone.

Q Did there come a time, Mr. Yamada, when the stocks that you had purchased in Dr. Rolf's account, and particularly the manipulated stocks, seemed to be coming apart?

A Yes,sir.

MR. KELLY: I object to that question, your

Honor.

THE COURT: Let's see what follows behind it. I assume it is just a predicate question.

MR. SILVERMAN: Yes, it is.

Q Did Mr.Stott discuss that fact with you?

A Well, he discussed that and several other points One of the points that Mr.Stott discussed with me regarding this was that --

MR. KELLY: Could I understand when this occurred?

THE COURT: Yes.

THE WITNESS: Toward the beginning of 1970.

A Mr.Stott discussed with the fact that he was getting fearful of the type of investments that I was making in Eastman Dillon, not because of Rolf's account but because he felt his superiors at Eastman Dillon were making noises and getting upset and that he didn't know what to do about it and I recall him writing some letter to Rolf -- he told me that he had to write some kind of letter to Rolf to get him off the hook and I said that was fine with me, it wouldn't endanger the relationship whatsoever and whatever he needed to do to get himself off the hook was okay with me.

Q Did he tell you he wanted to get himself and

Eastman Dillon off the hook and that is why he was going to write a letter to Dr.Rolf?

A Very definitely.

Q I will ask you to read to yourself, if you will, Defendants' Exhibit E and to indicate to me when you have finished doing so.

(Pause.)

THE COURT: That is in evidence?

MR.SILVERMAN: E in evidence, your Honor; yes.

Q In your opinion, Mr. Yamada, does the second paragraph of Defendants' Exhibit E accurately reflect the role Mr.Stott played in the handling of Dr.Rolf's account?

MR. KELLY: I object to that, your Honor.

THE COURT: Sustained.

Q Do you have any personal knowledge as to whether the facts stated in the second paragraph of Exhibit E are true or false?

A I would say that they are absolutely false.

Q What is the basis for your saying they are false?

A Because a significant amount of the portfolio that Dr.Rolf had came through recommendations of Michael Stott and that he was in fact far from an order-taker. He helped me maintain the account, he helped hold Dr. Rolf's hand for me.

Q When you were placing orders for stocks that were thinly --

THE COURT: It is obvious I am a notetaker, and it is just as obvious it is a non-jury trial, and we are not ordering daily copy.

Why don't you put all that together,all of you, and let me get down some of the notes during some of the trial so that it will be fresh in my memory when I work on it.

MR.SILVERMAN: Forgive me,your Honor.

THE COURT: Proceed.

Q Mr. Yamada, on stocks that were thinly traded, did you give Mr.Stott any directions as to how the stocks and from whom the stocks were to be purchased?

MR. KELLY: I object, your Honor. I don't understand the question.

THE COURT: Do you understand it, Mr. Yamada?

THE WITNESS: Yes,sir.

THE COURT: You may answer.

Overruled.

A Well, on several occasions I let Mr.Stott know that any size, particularly in the thinly traded stocks that were part of a manipulative scheme -- I let Mr.Stott know he should go to a particular marketmaker for the stocks since they had an inventory of the stock.

THE COURT: Since what?

THE WITNESS: That the marketmaker probably had an inventory of the stock.

Q Mr. Yamada, is your appearance here today a voluntary one?

A Yes, sir.

Q Did your attorney discuss with you any agreement which he had reached with me concerning your appearance here today?

A Yes,sir.

Q Did your attorney tell you that if you testified responsively, fully and honestly that the plaintiff would discontinue without prejudice this action against you?

A Yes,sir.

Q Did your attorney tell you that such agreement was conditioned upon any particular testimony?

A Absolutely not.

MR.SILVERMAN: Your Honor, I ask to have marked as Plaintiff's Exhibit 19, a two-page stipulation containing my signature and that of Mr.Tessler, and bearing the date July 1, 1976.

THE COURT: You are marking this 19 for identification?

MR. SILVERMAN: Yes,your Honor.

xxx (Plaintiff's Exhibit 19 was marked for identification.)

THE COURT: It bears the date what?

MR. SILVERMAN: July 1, 1976.

Q Mr.Yamada,when for the first time did you meet m

A Yesterday.

Q At what time?

A Yesterday evening.

MR. SILVERMAN: Your Honor, if I may have a short recess to look over my notes, I may have concluded my direct of Mr. Yamada.

THE COURT: We will take a recess.

(Recess.)

MR. SILVERMAN: Your Honor, I offer Plaintiff Exhibit 19 in evidence.

MR. KELLY: No objection.

MR.TESSLER: No objection.

THE COURT: Received. That is with the understanding of everybody that that has to be so ordered.

xxx (Plaintiff's Exhibit 19 was received in evidence.)

THE COURT: That is, it is not presently so ordered and for it to be effective it must, somewhere along the line, pass through that routine.

MR.SILVERMAN: It is our contemplation to submit an appropriate stipulation to your Honor to accomplish what Exhibit 19 says we intended.

I have no further questions of Mr. Yamada.

Your witness,Mr. Kelly.

CROSS-EXAMINATION

BY MR. KELLY:

Q Mr. Yamada, do you know when negotiations first commenced between your counsel and the counsel for the plaintiff looking towards the plaintiff's agreement to discontinue the action against you?

A No,sir.

Q Did you talk with Mr.Silverman by phone prior to the commencement of this trial?

A No, sir.

Q Did your counsel, in your presence, talk with Mr.Silverman?

A No, sir.

Q Prior to the trial?

A No, sir.

Q So the first time that this agreement was discussed was within the last two days?

A No,sir.

Q When?

A I would say it was within the last week or so -- excuse me. If your question was whether the agreement per se was discussed, my answer is incorrect. A possibility of a settlement was discussed about a week ago. The agreement, per se, I did not see the document nor did I hear anything about it except for the last two days.

Q Was the initiation of negotiations directed towards getting you a release from this litigation started by you?

A It was started by my counsel,yes, sir.

Q Would you agree, Mr. Yamada, that in the period 1969 to 1970 inclusive, that you were a well-known investor in securities?

A Yes,sir.

Q In that period, in each week how many meetings or phone conversations wouldyou estimate that you might have with representatives of security dealers?

A I couldn't estimate that. It would be innumerable.

Q Would it be fair to say it was innumerable each day?

A Yes, sir.

Q Would it be fair to say that because of the position that you held that security firms continuously communicated with you in order to attract you as their client?

A Yes,sir.

Q How many security firms would you say in the period 1969 to 1970 did you do business with either on behalf of yourself or any organizations for which you were responsible?

A I would guess close to 30 or 40.

Q Have you any idea of the amount of money during the year 1969, let us say, that was under your control for money management and investment purposes?

A If you are saying my control, are you talking about myself and my associates?

Q Yes. By "control" I mean that you had the responsibility, or your associates, to determine what investments should or should not be made.

A As you know, I had during this period several partners and when you say "me," I am referring to myself and my partners and associates.

Q Very well.

A I would guess in the neighborhood of close to 10 -- close to 25 million dollars -- close to $20 million, I would guess.

Q Could you tell me the name of five of the security firms with which you did the most business during the period 1969, 1970?

A Yes,sir. I would guess that Provident Securitie would be one, I would guess that Woodcock, Cummings might be another. I would guess that Arnold Wilkins & Company would be another. I don't --

Q Would it be hard to rate them after that with any degree of certainty at this point?

A Yes,sir.

Q In the period 1969 to 1970 you have named some prominent people who came to you, such as the head of the New York Stock Exchange, the head of one of the oil companies, and others. How many individual investors did you act either as investment advisor for or with a discretionary authority to trade for their account?

A Individually?

Q Yes, individuals.

A Of any magnitude, I would guess three, and then there were other small people that were personal friends and family friends.

Q WEre the three the ones you identified in your direct examination?

A No,sir.

Q Would you name the three?

A Yes, sir, Dr.Rolf,Augustine Marusi, and George Spyropolous.

Q Who is George Spyropolous?

A He was a client really more or less handled by my former partner, Mr.John Galanais, but because of our association and agreement, you could say I had responsibilit too. George Spyropolous is an investor from Venezuela.

Q With respect to non-individuals, would you ident fy the nature of the institutions whose funds you managed?

A Yes,sir. We had three principal ones. One was Takara Partners, which was an investment partnership. The other one was Competitive Associates,which was a publicly-registered, registered with theSEC, mutual fund.

Another one was ArmstrongCapital, which was an offshore fund, and to a smaller degree another partnership, Seljo.

Q With respect to Takara, who were the partners in that partnership?

MR. TESSLER: I object on the ground that this is irrelevant to the issues here,your Honor.

THE COURT: Sustained.

Q With respect to Armstrong, who were the partners?

THE COURT: Same.

Q With respect to Competitive Associates,who were the partners?

THE COURT: Same.

Q Will you tell me whatyour educational background is?

A I went to Washington & Jefferson College and attended Harvard Business School.

Q When did you graduate from Harvard Business School?

A I went one year. I went from '64 to '65.

Q What courses did you take there, in a general wa

A Mostly in finance accounting, this type of thing

Q Following your completion at Harvard --

THE COURT: Did you complete it?

THE WITNESS: No,sir.

Q Following your leaving Harvard, where then did you go?

A Iwent to work -- between my first and second year in Harvard I had an opportunity to work for a firm, Kuhn, Loeb & Company, and instead of going back I just staye

Q For how long did you stay at Kuhn, Loeb?

A Until the beginning of 1969.

Q When would you say you commenced with Kuhn, Loeb?

A I would guess the early spring of '69 -- I am sorry, the early part of 1969.

THE COURT: In what capacity were you employed there?

Q What did you do?

A I was in the research department. I was also in charge of special situations. I brought in certain clients and I became an officer of the firm.

Q What was the office that you held at Kuhn, Loeb?

A I was an assistant vice-president.

Q There came a time when you determined to leave Kuhn, Loeb?

A Yes, sir.

Q At that point would you tell me what it was that you then did?

A I started formulating plans to create an investment partnership and it was to this end that I was devoting my time, to get investors to come into a partnership.

Q When you first met Dr. Rolf would you tell me where you met him and how long the meeting took?

A My recollection, Mr. Kelly, is that I met him in New York City and, beyond that, I don't believe I can be precise. I don't have a recollection as to precisely the place and the exact time.

Q At that point did you have any discussions with Dr.Rolf with respect to his investment objective?

A Yes, sir.

Q I show you Plaintiff's Exhibit 3 in evidence and ask you if you recognize that letter?

A Yes,sir.

Q In that letter it is stated --

A Just a moment.

(Pause.)

A Yes,sir.

Q In that letter, in the first sentence, reference is made to the use of securities for trading.

A Yes, sir.

Q Do you have any recollection of discussing with Dr.Rolf at this meeting where you first met him trading his holdings?

A I don't know if the term "trading" is correct. What we did discuss was some of his investment objectives.

Q Will you tell me what was the discussion you had with respect to his investment objectives?

A Dr.Rolf -- I was never made aware of Mr. Sterling's precise performance while he had the account, but from the general tone of our conversation, again, it seemed to me Dr.Rolf was groping, but he wanted to be more aggressive and he was interested in special situations. He felt that he wanted to get as aggressive as possible and he wanted new issues and this type of thing.

Q With respect to special situations, could you tell me what was the nature of the discussions that occurred at the time of this meeting?

A Well, he wanted to buy under-valued stocks that had a potential for a substantial gain in the future. Basically, that is what our discussion was, more or less general.

Q Did he tell you what was his objective in respect of the enhancement of his capital?

A He was looking for capital appreciation.

Q Did he give you any measure as to the amount he wished to accomplish and in what period of time?

A Mr. Kelly, I don't recall whether it was at that specific meeting, whether we discussed the possibility of doubling his portfolio, or not, but we did have a discussion about that.

Q Can you give me any approximation of when you now believe that that discussion took place?

A At the very early part of our relationship.

Q Some time in the summer, or before, of 1969?

A Yes, sir.

Q At the time of this first meeting were you made aware of the holdings that Dr.Rolf had in his account with Eastman Dillon?

A Yes, sir.

Q Did you and Dr. Rolf discuss those holdings?

A Some of them, yes, sir.

Q Did he express any viewpoint with respect to whether he wanted them held or disposed of?

A No, Dr. Rolf was prepared to give me pretty broad discretion over the account, and we discussed some of the stocks -- my recollection of the portfolio was that it was an extremely aggressive portfolio and it seemed to me that a lot of the stocks that were bought should have been sold anyway, or should have been sold prior to my getting the account.

Q I show you Exhibit A-4 in evidence --

MR. SILVERMAN: Your Honor, may I ask that Mr. Kelly wait until I get out the exhibit?

MR. KELLY: Sure.

(Pause.)

Q Do I correctly understand you, Mr. Yamada, to say that with respect to these holdings as of April 27th they were, at least as to some, speculative and aggressive?

A Very definitely aggressive, and some speculativ

Q Would you tell me with respect to the holdings that are listed on this exhibit as to each one of them your characterization with respect to the quality of the security?

MR. SILVERMAN: Objection.

THE COURT: Well, it may be that I have a copy of this up here, but it would be helpful as the trier of the facts to be able to follow along with the witness and know what we are addressing.

MR. SILVERMAN: Your Honor may have my copy.

THE COURT: No, you keep your copy and we will proceed. The objection was based on what?

MR. SILVERMAN: This is beyond the scope of my direct examination. I didn't ask about the securities in the portfolio, I didn't ask this witness to grade the securities that were purchased by Eastman Dillon and if Mr. Kelly is going to go beyond direct, then he should be aware that he is making the witness his witness and he is going to be bound by it, if your Honor exercises your discretion and allows him to go beyond direct.

THE COURT: Do you wish to make an offer of proof, Mr. Kelly?

MR. KELY: One of the critical issues in this case is the investment objectives and directions of Dr.

Rolf. One of the critical questions in this case is as to whether and to what extent the defendants, Eastman Dillon and Mr.Stott would be in a position to evaluate whether or not the securities acquired by Mr. Yamada were or were not in accordance with those objectives. It is being contended, and I say improperly and incorrectly, that we were managers with respect to the transactions in this account, and I wish to show, both with respect to the holdings that existed and with respect to the objectives of Dr. Rolf, that he was not what is being said to be an investor interested primarily in the preservation of his capital.

THE COURT: Well, I do believe that is beyond the scope of direct, Mr. Kelly. I understand it is your wish to develop that somewhere in the course of the trial, but I don't recall that Mr. Silverman elicited anything from this witness which tended to bear on the question of whether Dr.Rolf was interested in investments which would preserve his capital. His questions and the answers he elicited tend to suggest a different course.

MR. KELLY: It seems to me, your Honor, it is clear that throughout the course of the direct an effort was made to establish that the securities were not suitable for Dr.Rolf --

THE COURT: Direct of this witness?

MR. KELLY: Yes, sir. Continuously the essence was as to the suitability of this and that suitability goes as well not only to the nature of the stock, it goes equally to the objectives and wishes of Dr. Rolf. It seems to me perfectly clear that Dr. Rolf was entitled to speculate with his money if he wanted to do so. It is my --

THE COURT: You go ahead, Mr. Kelly, you develop that.

MR. SILVERMAN: May we have a ruling that to the extent it is beyond direct Mr. Kelly is bound by it?

THE COURT: No. I will consider it to be within the scope of direct. What was elicited on direct has some relationship to what was suitable and consequently to the goals of the client.

MR. SILVERMAN: These were investments made by Eastman Dillon and not by Mr. Yamada or Mr.Stott.

THE COURT: Would you address that point, Mr. Kelly?

MR. KELLY: These were the securities, your Honor, that were held in the account when Mr. Yamada took over. It is the fact that they were securities that were acquired in the account of Eastman Dillon by Mr. Sterling on Dr. Rolf -- for Dr. Rolf's account. I share the view that these securities were in some respects what Mr. Yamada has said --

THE COURT: You concede his qualifications as an expert, first of all? I gather you are about to ask him some opinion questions?

MR. KELLY: I concede his qualifications in the sense that he is an expert in the securities industry, yes. I don't question that.

THE COURT: I am correct in anticipating you are going to ask him opinion questions about these purchase

MR. KELLY: I am not certain I will, your Honor. For example, with respect to these securities, Mr. Yamada sold them and I don't think it is a question of expertise but it becomes a question of direct participation.

THE COURT: I will allow you to proceed and I consider it to be within the scope of direct. Go ahead.

BY MR. KELLY:

Q The question, Mr. Yamada, pending, was with respect to each of these securities, will you give me your observation as respects their quality as investments or speculations?

MR. SILVERMAN: I am sorry to rise again, your Honor. There is no question that this witness is qualified to give opinions, but he is a party in the case and I wonder if he can give opinions, being a party defendant. He certainly lacks the objectivity that Mr. Whitman would have.

THE COURT: That is a good point.

MR. KELLY: I don't know that I see any difference between the viewpoint of Mr. Whitman and Mr. Yamada as respects impartiality, your Honor.

THE COURT: Well, there is at least the difference that is not in the position of having to worry about whether he is going to win or lose in a lawsuit before us, Mr.Whitman didn't have that hazard.

MR. KELLY: Neither does Mr. Yamada.

THE COURT: Mr. Yamada has it until I so order the document submitted. He is in this for the balanc of the trial.

MR. SILVERMAN: There are cross claims against Mr. Yamada that Eastman Dillon is asserting also, your Honor, and the dismissal is, finally, without prejudice.

MR. TESSLER: Your Honor, may I be heard?

THE COURT: Yes.

MR. TESSLER: Yesterday in my cross-examination of Mr.Whitman, there was introduced into evidence Yamada's

Exhibit A, Mr. Whitman's evaluation of the stocks in Dr.Rolf's portfolio as of April 30, 1969, and that is an issue in this case and is certainly relevant as to what the witness thought the quality of those stocks were. Clearly his bias or prejudice or interest is a matter to be taken into account by your Honor in giving effect and weight to his testimony, but I think it is a matter for which this witness is particularly qualified.

THE COURT: I agree. You may proceed.

BY MR. KELLY:

Q Do you have the question, Mr. Yamada?

A Yes, sir, I believe I do. Let me preface my answer by saying what I try to define in this context of what I mean by aggressive, speculative or investment mer or what have you: As opposed to some of the securities purchased for Dr.Rolf, all these stocks would be considered aggressive investments in the sense that they were all listed -- as near as I can tell they were all listed on a national stock exchange, and they all were fairly active, traded companies. So in terms of the risk, the market risk of not having a definable market or being able to sell size, I don't think any of these stocks carried a risk, whereas the other stocks purchased in Rolf's portfolio definitely did.

I would also say none of these stocks were, to the best of my knowledge, involved in any manipulative schemes, etc.

As to the substance of the various companies, I know there are several -- more than several conglomerate type of companies that were in vogue in the latter part of the sixties, and they would be very definitely considered aggressive investments and certainly not one I would consider putting in a widow's account.

Do you want me to name each one specifically?

Q Yes, please.

A I would class in that group Loew's Theatres, Leasco Data Processing, Avnet.

Q Would it be fair to say as to those they were at the time the glamour stocks attractive to those looking for a quick return?

A Yes, sir.

MR. SILVERMAN: Objection, your Honor, and move to strike.

MR. KELLY: Your Honor, this is the very essence of the case. This is what this case is all about.

THE COURT: But we are going to do it in a little different fashion than that. That is a little too off the top of the head issue. If you want to elicit from him expert information, do it in that fashion. I could testify in that fashion. Let's use him as an expert and elicit from him that which he peculiarly brings to this case.

Sustained.

Q Would you go ahead, Mr. Yamada?

A Yes, sir. The stocks I just mentioned would be classified as a conglomerate stock, and that was, as a group, a place where aggressive money flows to at that a little earlier, I would guess, in '69, and that is where much of the aggressive investment money, mutual funds, etc., where they made much of their investments, and that was a group of stocks that were reasonably in vogue.

Q All right, go through the rest of them, Mr. Yamada.

A Glen Alden, International Industries, and I guess Avnet, and also Talcott, but he has since sold that, I believe, Levin-Townsend, National General, and Teledyne would be stocks that also were in the same category, they were emerging conglomerates or contemplating becoming conglomerates, but they were not, in my opinion, again, quite on the level as the previous group I mentioned, and they would be classified below the initial stocks I mentioned but, here again, they were still listed on the New York Stock Exchange, still freely traded but they were very definitely racier investments.

Then he has investments which are blue chip in nature.

Q Which you would consider to be which ones?

A General Electric, and I guess at that time Anaconda was, Raytheon would be one, and I guess Pittston would also be a pretty good stock.

Q Would you say that was also true of Penn Central?

A At that time?

Q Speaking at the time.

A Yes, sir.

Q What would be your rating with respect to Asamera Oil?

A I was not too aware -- I was very weak in terms of oil stocks and I just didn't know very much about it. From a look at Asamera's balance sheet, and when I say balance sheet, I am talking purely of the financial statement, Asamera would be considered a highly speculative investment, but from a point of view of Asamer'a production reserves or however oil stocks are valued, I would guess it is a little bit better company than that.

Q A little better than?

A Than what the balance sheet per se reflects.

MR. SILVERMAN: Your Honor, I move to strike Mr. Yamada's testimony on Asamera on the ground that he has conceded he is not an expert on oil stocks and therefore he should not be allowed to give an opinion on the stock.

THE COURT: I think he can give an opinion but it is limited to his viewpoint drawn from his assessment of the balance sheet.

Q Mr. Yamada, you said in this first meeting with Dr. Rolf that there was a discussion of some of these holdings.

A Yes, sir.

Q Can you recall what securities were discussed and what was said?

A I recall discussing Levin-Townsend, for one, and I guess National General and a couple of the other conglomerate stocks.

Q What was the discussion?

A The discussion was, essentially, that the major plays in these stocks had already gone by and it was time to get rid of them, that he probably should have sold them earlier.

Q Is that what Dr. Rolf suggested or is that what you suggested to him?

A That was brought up in our general conversatio I don't recall whether he brought it up or I did.

Q Did he agree with the decision that those should be disposed of?

A He had no qualms about me disposing of them.

Q Was there a discussion of the liquidation of all of these securities at that meeting?

A No, sir, there was not a discussion of liquidating the entire portfolio.

Q Was there a discussion of liquidating securitie on this list other than the ones you just referred to?

A I don't recall.

Q Do you recall, Mr. Yamada, the fact that the bulk of these securities was sold by the summer of '69 and all of them were sold by the end of '69?

A Yes, sir.

Q With respect to the decision to sell, who made that decision?

A I did, in general.

THE COURT: You did?

THE WITNESS: Yes, sir.

Q Did you discuss with Mr. Stott the selling of any one of these securities?

A I discussed with Mr.Stott the selling of securities and he wanted to make sure it was done through Eastman Dillon.

Q When first did you discuss with Mr.Stott the selling of these securities, any one of them?

A I can't recall as to the specific stock in general, but I would guess when I started selling them, which would be in May of '70.

Q Did you discuss with Mr.Stott, or he with you, the wisdom of selling any of these securities?

A He thought it was a good idea too. He thought a lot of the conglomerate stocks had also had their play.

Q With respect to Asamera, did he have a viewpoint as to whether it should be sold?

A No. That was a stock I took upon my self to sell and then I turned around and bought it back on his recommendation.

Q With respect to INA Corporation, did he have any discussion with respect to the sale of that with you?

A I don't recall.

Q With respect to Penn Central?

A I don't recall.

Q With respect to Occidental Petroleum?

A I don't recall.

Q Scientific Resources Corporation?

A I don't recall.

Q Teledyne.

A I don't recall.

Q Raytheon.

A I don't recall.

Q Pittston.

A I don't recall.

Q Anaconda.

A I don't have a recollection.

Q Avnet.

A I don't recall.

Q CNA Financial.

A I don't recall.

Q Cities Service.

A I don't recall.

Q Ebasco Industries.

A I believe that one we did discuss a little bit.

Q What do you recall --

A We discussed about the company. I was not too familiar with it and I think Ebasco was eventually going to merge with Boise Cascade, and Michael knew somebody who worked with Ebasco and we discussed that. It was a general kind of discussion.

Q Was it his idea with respect to Ebasco that it should be held or sold?

A I don't recall.

Q General Electric.

A I don't recall.

Q International Industries.

A I don't recall.

Q Buttes Gas & Oil.

A I don't recall.

Q Loew's Theatre warrants.

A I don't recall.

Q Leasco Data Processing warrants.

A I don't recall.

Q Did Dr. Rolf at this meeting tell you that he did not want Mr.Stott to be the person who was authorized to buy and sell securities?

A He didn't say that. He told me he wanted me to be, but he did not render a negative statement about Michael as to the -- I don't recall, anyway.

Q Did Dr.Rolf tell you the extent of his knowledge of Mr.Stott?

A Not to my recollection.

Q Did he tell you he had never met Mr.Stott?

A No, I don't believe he said that to me.

Q Did he tell you how many times he talked with Mr.Stott?

A I don't have a recollection.

Q Did he tell you that Mr.Stott had asked to hand Dr.Rolf's account?

A No.

Q What did he tell you about Mr.Stott?

A He didn't say much other than the fact that Michael Stott was a representative of Eastman Dillon and that MichaelStott was friendly or knew Mr. Sterling, who had since passed away, and that I got the general impression that Michael Stott and Rolf were together in selecting an investment advisor.

Q Did Dr.Rolf tell you that he was consulting other than you as a potential investment advisor for him?

A I don't believe Dr. Rolf told me that, I believe Michael Stott told me there was one other name mentioned, a Donald Geddes of Inverness Management, and I think Michael may have told me that Rolf may be interested in other people as well.

Q When did Dr.Rolf tell you that he had determine that he wanted you as his investment advisor?

A I don't recall the specitif time.

Q Do you recall whether it was at that first meeting and subsequent to it?

A It was subsequent to it.

Q Then am I not correct in saying that a document was signed which gave you the discretionary authority over Rolf's account with Eastman Dillon?

A I guess I did sign a document. If you refresh my recollection --

Q I have put before you Defendants' Exhibit B. Do you recognize that document?

A I do now, sir.

THE COURT: Is that B in evidence?

MR. KELLY: Yes, sir.

Q And it contains your signature?

A Yes, sir.

Q With respect to the other accounts that were opened up for Dr. Rolf, do you recall whether or not you had a like authority with respect to those accounts as this one?

A I probably did, sir, particularly with the ones that he opened in the New York Stock Exchange houses, because it was standard procedure.

Q So that there was, as best you can recall, in those accounts trading authorizations to you?

O Yes, probably.

Q During the course of this meeting with Dr. Rolf am I correct in saying that he did not tell you that his investment objective was the preservation of capital and increasing that capital only by taking reasonably prudent risks?

A The general tone of the conversation was toward aggressiveness. There is no question about that.

Q When first did you meet with Mr. Stott, do you recall?

A I would say very early in 1969, probably January, or so, 1969.

Q Was that before or after you had left Kuhn, Loeb?

A I had already made my decision to leave, yes, sir, but I was still there.

Q You were still at Kuhn, Loeb?

A Physically, yes, sir.

Q Do you recall physically when you actually did leave Kuhn, Loeb?

A I guess late February.

Q Of 1969?

A Yes, sir.

Q In the period of time, Mr. Yamada, up to your meeting with Dr. Rolf, can you approximate how many times you might have met, physically met, with Mr.Stott?

A Between the time that I initially met Mr. Stott --

Q Up to the point that Dr. Rolf selected you as his investment advisor.

A We did not meet often, but we met several times

Q Would you say you had infrequent telephone conversations?

A Yes,sir.

Q With respect to the meetings that you had in this period of time, were any of them what you would call social not business?

A Well, I recall several lunches that we had and the purpose of the lunch, 90 per cent of the time, is social, but there is a usual business reason for it. So we did discuss business from time to time.

THE COURT: You are talking about meetings with Stott now, correct?

THE WITNESS: Yes, sir.

Q In either meetings with Stott or through other communications in this period of time, did he inform you of the securities that Eastman Dillon was recommending?

A Not really.

Q Did he furnish you with any research data prepared by Eastman Dillon?

A I don't recall.

Q I show you two documents, one marked Exhibit F, one marked Exhibit O, and they are in evidence, and I ask you if you recognize those documents.

A Yes, sir.

Q Addressing your attention to Exhibit F, Mr. Yamada, when did you first discuss Delanair with Dr. Rolf?

A I guess it would have to be towards the late summer of 1969, or early fall.

Q What did you tell him with respect to Delanair?

A In essence, what this letter says.

Q What did you know about Delanair?

A Not much more than what this letter says.

Q Was there any wrongdoing or manipulation known to you as respects Delanair?

A No,sir.

Q In this letter, in the second paragraph, it states "The funds necessary for this commitment will be provided for." Can you explain to me what that means?

A Well, I guess what I was saying is that they needed a certain amount of money to accomplish some of the acquisitions or mergers they were contemplating and investments they were contemplating and the amount of money they needed was more than what Dr.Rolf's investment would be, and it was to be more than what Dr.Rolf's and Takara Partners investment was to be.

Q Who was D. H. Blair?

A A very small, aggressive New York StockExchange company.

Q Did you discuss this investment with D.H. Blair?

A Yes.

Q Who is Marshall, Bratter, Greene, Allison & Tucker?

A They were attorneys representing D.H. Blair and one of the principals of Marshall, Bratter was also involved in Delanair, and they were involved in a lot of acquisitions and mergers.

Q That firm?

A Yes, sir.

Q They were highly qualified in that area?

A Yes, sir.

Q Did you discuss Delanair with them?

A I don't believe so. I may have had a discussio with Mr. Heine, who was a principal in that firm, but I don't recall.

Q At the time this letter was written had Dr. Rolf agreed to make this investment?

A I believe so.

Q Do you recall that the amount of the investment was $340,000?

A Yes, sir.

Q With respect to this letter, was it before this letter or after this letter that you had any discussions with Mr.Stott concerning Delanair?

A I think we had a discussion before this letter because I was selling stocks and raising cash and he knew that I was interested in making a private placement.

Q Can you approximate when you first discussed Delanair with Mr.Stott?

A I can't give you the exact date, no,sir.

Q Can you give me an approximation of the period of time prior to your transmission of this subscription agreement?

A I would guess it wouldn't be much more than a week to two weeks.

Q In that conversation with Mr.Stott what did you tell him with respect to Delanair?

A In essence, what was said in the letter, that

I was going to make a private placement in this company, that it was going to be run and managed by two bright people from D. H. Blair and it was going to be used as a vehicle to make acquisitions and that D.H. Blair would be a principal in the company. At that time D.H. Blair had, I guess in 1969 -- I guess they were responsible for 25 different mergers and they were very active in this field.

Q Did you tell Mr. Stott that the private placement securities would be subsequently offered in a public placement?

A Yes, sir.

Q Did you tell him when that public offering, including these securities, would occur?

A I don't recall the exact time, but that was the understanding that I had with D.H. Blair, that I would take the private placement. If they would take me out in the public underwriting.

Q This was the understanding you had with Blair?

A Yes, sir.

Q And it was based in part on that understanding that you recommended this investment to Dr. Rolf?

A Yes, sir.

Q At that point did you have any understanding with respect to the price at which the stock would be publicly offered?

A I don't recall that.

Q Do you have any recollection as to knowing when the stock would be offered?

A I think it was one year. My recollection is that part of the money which was the money for the stock was put up right away and then there was an additional sum of money for the warrants which was to be put up a few months later, and after that total investment was made, I think it was supposed to be a year later, or something, that an underwriting was supposed to be accomplished.

Q Did you tell Mr. Stott there was going to be a public offering?

A I am sure I did.

Q Did you tell him the public offering would be made by D.H. Blair & Company?

A I am sure I would have.

Q Did you tell him the price at which the public offering would be made?

A I don't think so, I don't recall that.

Q Did you tell him when the offering would occur?

A I may have. I have no recollection.

Q Did you send him copies of the subscription agreement?

A I don't recall.

THE COURT: We will interrupt here and resume at tw- o'clock.

Off the record.

(Discussion off the record.)

(Luncheon recess.)

AFTERNOON SESSION
2:15 P.M.

AKIYOSHI YAMADA resumed.

THE COURT: You are still under oath, Mr. Yamada. Please continue, Mr. Kelly.

THE WITNESS: Yes, your Honor.

CROSS-EXAMINATION (continued)

BY MR. KELLY:

Q If my recollection serves me correctly, Mr. Yamada, I was asking you about Delanair.

A Yes, sir.

Q You say you had a discussion as to Delanair wit Mr.Stott prior to the transmission of this subscription agreement to Dr. Rolf?

A Yes, sir.

Q YOu had said it was within a period of a week or two, or something in that area?

A It was very close to that time.

Q In that discussion did Mr.Stott give you any information with respect to Delanair as an investment vehicle?

A No,sir.

Q To your knowledge, did he have any information?

A I don't believe so.

Q What did you tell Mr. Stott regarding the wisdo of making this investment for Dr. Rolf?

A I believe I stated earlier that it was pretty much along what I stated in the letter to Dr. Rolf.

Q Did you tell Mr.Stott that you were of the opinion that this was a good investment for Dr. Rolf?

A I believe I may have, yes, sir.

MR. TESSLER: Your Honor, could you ask both counsel and the witness to keep their voices up?

THE COURT: Would you please keep your voices up.

Q Did you believe it was a good investment for Dr. Rolf?

A Yes, sir.

Q Did you tell Mr. Stott that you had recommended that Dr. Rolf make this investment?

A Could you repeat that question?

(Question read.)

A I believe so.

THE COURT: What was Stott's reaction? What did he do or say, once you told Stott of your recommendation concerning Delanair?

THE WITNESS: Not much of anything.

THE COURT: Do you recall any comment at all?

THE WITNESS: No,sir. We had subsequent

conversations regarding Delanair, but at that particular time I don't recall any.

Q Did there come a time when you were sued by Dr. Rolf with respect to his investment in Delanair?

A I believe so -- not I believe so, but I was sued, yes, sir.

Q Would you turn, Mr. Yamada, to Trial Exhibit O in evidence.

MR. KELLY: I think I put one of those on your desk, your Honor.

Q You are familiar, Mr. Yamada, with that agreement?

A Yes, sir.

Q Do you know, Mr. Yamada, when Monarch was first bought for the account of Dr. Rolf?

A I don't have the precise date.

Q If I gave you the records you were looking at on direct examination, would that help you?

A Yes, sir.

Q Bearing in mind that these reflect transactions in 1969 and 1970 and 1971 --

A Yes.

MR. KELLY: May I say for the record these are Exhibits BB, CC and DD in evidence.

Q Can you from those, Mr. Yamada, tell me when an investment in Monarch was first made?

A Yes, May 22 and June 17.

THE COURT: 19--?

THE WITNESS: '69.

Q Do you know with respect to those purchases where they were placed so far as concerns a broker-dealer?

A The initial payment, the May 22nd payment, was purchased through Lynch, Jones & Ryan, and the June 17, 1969 payment was purchased through Amswiss International.

Q What were the total amounts in those transactions to which you refer?

A 11,300 shares.

Q WEre those two accounts accounts which you asked Dr. Rolf to open?

A To open?

Q To open.

A I suppose so.

Q Prior to the purchase for the first time of Monarch, did you discuss Monarch with Mr.Stott?

A No, sir, not to my recollection.

Q Do you have any recollection of when the first time arose where you did discuss Monarch with Mr. Stott?

A I believe I testified earlier that it was some time between the first and second purchase of Monarch and the discussion basically centered around the fact that I was tying up a substantial amount of Dr. Rolf's portfolio in one stock. Mr.Stott made mention of the fact that he was not receiving commission business and I explained to him what I thought the possibilities of Monarch were and what I thought the company's future looked like, and that was generally what our conversation was.

Q So far as you knew, did Mr. Stott know anything about Monarch?

A To the best of my recollection, no, sir.

MR. SILVERMAN: I object, your Honor.

THE COURT: You mean for want of a time?

MR. SILVERMAN: No, your Honor. I don't think this witness --

THE COURT: All right. Sustained.

Q In your conversations with Mr. Stott did he make any statements to you concerning any knowledge he had regarding Monarch?

A No, sir.

Q What did you tell him with respect to the wisdom of investing in Monarch?

A Well, I thought that there was a possibility that the Mobile Home stocks in general might do well, that Monarch was a small one but it was also one that seeme to have the right kind of backing on Wall Street. It was a small, aggressive investment bank behind Monarch and I had spoken to the management and its prospects looked excellent, and I thought that was a nice way to participate in the Mobile Home field.

Q Did you ask Mr.Stott if he agreed with the opinions you had regarding Monarch?

A I have no recollection.

Q Did you tell him you were acquiring the Monarch securities outside of the Eastman Dillon account?

A I believe I had that discussion with him.

Q What did you tell him was the reason why those acquisitions were made outside of the Eastman Dillon account?

A In the case of Lynch, Jones & Ryan, I owed them commission business. In the case of Amswiss, I don't recall.

Q Did you have any knowledge that Monarch Industri could not have been acquired by Eastman Dillon in the account of Dr. Rolf at Eastman Dillon?

A No, sir.

Q Turning to this trial Exhibit O, I take it there came a time when you agreed to receive 9600 shares of Monarch into Seljo?

A That's correct.

Q Can you tell me by what means there came to be ascribed to the Monarch 9600 shares $100,000 value?

A Well, Dr. Rolf had begun to put an awful lot of pressure on me, and of course I had my own problems by then with the Securities and Exchange Commission and other entities --

Q By what time are you talking of, approximately?

A Late summer or early fall of 1970. I was trying to keep sort of a balloon from collapsing, I guess, and one of the problems I had was Dr. Rolf. Now, Dr. Rolf harped on this Monarch Industries and I felt that in the case of Monarch I had made a decision which was based on investment -- it was an investment decision as opposed to any other kind of decision, and what I intended to do was to take in his 9600 shares into Seljo at or near his cost and assume the differential myself, have the partnership assume it.

Q Is it fair to say that the market price of those securities was in the neighborhood of $70,000 rather than the hundred value?

A I don't have an exact figure, but it was very definitely less than $100,00 and it was a good deal less.

Q Do you remember that what happened was that the Monarch was sold and the proceeds were placed into Seljo?

A That is correct.

Q Can you tell me why the securities were not delivered into Seljo in accordance with this agreement?

A I don't recall, but I think there was some discussion as to custodial problems and release of the stock by Eastman Dillon, or something like that. So what we did was just went ahead and sold the thing.

Q Am I correct in understanding that the sale of Monarch, so far as the 9600 shares that were referred to in this agreement, were sold outside of Eastman Dillon?

A Yes, sir, I believe --

MR. SILVERMAN: I object, your Honor. We have records of the sales and I think they should be put in rather than trying to test this witness' recollection.

THE COURT: Overruled.

MR. SILVERMAN: I say this only because I have in front of me exhibits that show it was sold at Eastman Dillon and through Eastman Dillon, and that is why I object to that.

THE COURT: If that is so, I will sustain the objection.

MR. SILVERMAN: Thank you.

Q I show you Defendants' Exhibit X in evidence, a record of Woodcock,Meyer, and ask you if that will evidence the fact that the 9600 shares I just talked about were sold in Dr. Rolf's account with that firm, Woodcock, Meyer? Were 9600 shares of Monarch sold in that account?

A Yes, sir.

Q Were the proceeds $70,800?

A Yes.

Q Is it your recollection that the $70,800 was paid into Seljo in money?

A Yes, sir.

Q Did you have any discussion with Mr.Stott respecting the question as to why those shares were not sold by Eastman Dillon in Dr.Rolf's account with Eastman Dillon?

A I don't recall, sir.

Q Do you have any reason to believe that Eastman Dillon could not have effected the sale?

MR. TESSLER: Objection, your Honor, calls for a conclusion by the witness.

THE COURT: Sustained.

Q Did you ask Mr.Stott to sell these 9600 shares of Monarch?

A I just don't recall.

Q Did you ask this other firm to make that sale?

A Well, they made the sale, so I must have asked them.

Q So that any instructions on that account as to selling would have emanated from you?

A Yes, sir.

Q Turning to Exhibit O again, Mr. Yamada, paragraph 4 refers to a put. Can you tell me to whom that put could be made?

A I don't recall. I don't know if I have a copy of that put. It has been a while. If you have a copy, I might be able to refresh my recollection.

Q So far as I presently know, Mr. Yamada, this is all I know about this agreement. Is it your understanding there are any other documents than this one?

A Mr. Kelly, I really wouldn't know. I don't recall signing a separate put agreement with Dr. Rolf, and in answer to your earlier question, I would presume what I was talking about at that time was a put to the partnership.

Q Takara Partners?

A No, To Seljo Associates, or it could have been to me personally, but I recall no existence of a put, a separate document.

Q You recall no separate document than this one?

A That is correct.

Q And do I understand that your best recollection is that the put was either to Seljo or to you?

A Yes, sir.

Q With respect to the terms of this agreement, did you ever discuss this agreement with Mr.Stott?

A I don't believe so.

Q Did you ever discuss with Mr.Stott the potentia of having the Monarch shares delivered to Seljo as an investment?

A I don't recall.

Q Did you ever discuss with Mr.Stott what Seljo Associates was?

A I believe so.

Q What did you tell him?

A Itold him that it was another investment partnership that I was creating.

Q Is that all you told him about Seljo?

A I think I may have told Stott that some members of my family were going to invest in it as well, but I really don't recall.

Q But you have no recollection of discussing with him any investment by Dr.Rolf in Seljo?

A I don't recall, one way or another.

Q Mr. Yamada, do you recall, or from the documents in front of you can you refresh your mind, with respect to when there was a purchase of M.H. Studios for Dr. Rolf?

A Yes, sir, October of '69.

Q Do you recall that those securities were acquired in a brokerage firm Baerwald & DeBorr?

MR. TESSLER: Your Honor, I think on a question like that it is unfair to ask the witness to recall something by looking at documents that he did not prepare, that are in front of him. If he recalls, that is fine, but if not, I think he should say that. The fact that it is on a document doesn't mean it is so or that it helps the witness recall.

THE COURT: Mr. Yamada, to the extent you are looking at documents, you may continue to do so to see if your recollection is refreshed, but we still want your recollection, not just what appears on a document. If you don't recall, say so and if you do, you can tell us.

THE WITNESS: My recollection is that M.H.

Studios was a manipulated stock or a purchase that had no investment basis. The people involved in that was Baerwald & DeBoer.. The documents don't show they were the purchaser, but they were the brokerage house behind this stock.

Q Did you discuss this stock with anybody at Baerwald & DeBoer?

A Did I discuss it?

Q Yes.

A Oh, yes.

Q Do you recall that the security was received in at Eastman Dillon and then delivered out during the month of October --

A Yes, I recall that. That's right.

Q I am right in saying that that acquisition of M.H. Studios was in October 1969?

A Yes, sir.

Q Prior to the time that you directed the acquisition of M.H. Studios for Dr. Rolf, did you discuss M.H. Studios with Mr.Stott?

A I did not discuss with Mr.Stott the investment merits of M.H. Studios, no, sir.

Q Did you have any discussions with Mr.Stott --

A I recall he asked me what I was doing buying that stock and I told him there was a box on it, and don't worry, there would be a profit.

Q When did you have a discussion?

A I would guess just prior to the purchase of it. What happened with M.H. Studios is, if my recollection serves me right, one of the other entities bought the thing without an actual stock transaction. In other words, there was no actual sale, it was just a privately negotiated sale.

Q I am not clear on that. Would you explain that?

A M. & H. Studios was purchased on October 3 --

Q Purchased for Dr.Rolf?

A Yes. Subsequent to that, Mr.Stott and Dr. Rolf and I had discussions about M. & H. Studios.

Q This was after it had been acquired?

A Very shortly thereafter, and subsequent to that as well. There was some question as to the viability of company, and I recall that the price of the stock, if I am not mistaken, had dropped substantially since then, and so I told Stott and I told Rolf that I would take care of it and if my recollection serves me right, one of the other entities I was managing ended up buying M & H. Studios directly from the account without going through a brokerage transaction.

Q Showing Dr.Rolf a profit?

A Yes,sir.

Q You have used the term "box."

A Yes, sir.

Q It is a term that at least to me is totally unknown. Could you explain to me, when you use the term "box" what you mean by that term?

A In over-the-counter securities of, well, new issues,etc., where there are limited numbers of shares available in the hands of the public, usually 50, 60,000 shares or 100,000 shares, many times, in many cases an underwriter would make attempt to control all the publicly-held shares and if he is successful in controlling as many of the publicly-held shares as are outstanding, then he can move the stock up or down at his pleasure. When he has this control, the control is what I mean by "box."

Q Do I interpret you correctly to say that where you refer to the term "box" you refer to a situation in which someone has cornered the market of the publicly-available shares?

A Yes, a significant amount of the publicly issued shares.

Q Does your use of the term also embody an illegal manipulation?

A Yes, sir.

MR. TESSLER: Objection.

THE COURT: Sustained.

MR. KELLY: I am merely asking to understand his meaning of the term "box" in its full import, your Hono

THE COURT: You are asking for his state of mind --

MR. KELLY: What he means by the term.

THE COURT: I will allow that.

MR. KELLY: That is so I will know when he says "box" I will know what he means.

MR. TESSLER: My objection is to the term "illegal."

THE COURT: Counsel may inquire about that impression.

A In answer to your question, most of the time I would refer to the term box as you stated, but there are cases where it is legal.

Q So far as your understanding is concerned, was the situation with M.H. Studios legal?

A You are asking for a legal conclusion, but from my point of view it was not.

Q Were you a participant in the accomplishing of a cornering of that market?

A No, sir.

Q Who was the one or organization that you understood to have cornered that market?

A Baerwald & DeBorr.

Q Did you have discussions with them with respect to how they should corner the market?

A My recollection is at that time I really didn't even know M.H.Studios was being cornered and that stock was bought with the strong recommendation of my former partner, Mr. Galanais, and I wasn't really privy to the fact that there was a box or there was a corner and when it was bought and at a subsequent date when the stock went down and there was some harping by Rolf, etc., I went and investigated the situation and I found out what it was and, in fact, the funds to take out Dr. Rolf in this were provided by the principals of Baerwald & DeBoer.

Q When did you first learn that this security had been boxed, using the term as you have defined it?

A After the purchase.

Q Do you know how long after the purchase?

A I don't recall. I was given assurance that the stock would not go down, that it was -- that the situation was under control, but the precise question as to the box, I know that it was afterwards.

Q When did you get the assurance that the stock would not decline in price?

A Oh, right about when it was purchased.

Q Who gave you that assurance?

A My ex-partner, Galanais.

Q Did he specify to you why the price would not go down?

A Well, he just stated that Baerwald & DeBorr was working in the stock and that they would make sure that it was going to be all right.

Q When prior to the purchase of M.H.Studios did youdiscuss that investment with Mr.Stott, if you did?

A I don't recall.

Q Do you know whether you did discuss M.H. Studios --

A I discussed M.H. Studios with Mr. Stott right around that time.

Q Are you saying you had this discussion before or after the purchase?

A I just don't recall.

Q Was it before or after you ascertained that there was some illegality, in your opinion?

MR. TESSLER: Objection.

THE COURT: Sustained.

Q Did the conversation with Mr.Stott take place before you discovered what you said you discovered with respect to the cornering of the market?

A I don't recall.

THE COURT: Well, didn't you tell us a few moments ago that Mr.Stott some time around the time the purchase was made, whether before or immediately after, asked you why you were buying M.H.Studios and you told him, "We have the box on it."

THE WITNESS: I said we had the control of it. I am sort of getting sort of confused with Mr. Kelly. He is asking me specific questions as to the word "box," and I can't recall precisely at what time I used that word. My discussion with Stott on M.H. Studios was centered around the fact that the stock would not go down, that it was a possible potential profit-maker, etc., that was under control. I don't know, or I don't recall when I used the specific term "box."

Q Did you ever use the term "box" as a term related to M.H. Studios when you were in discussions with Mr.Stott?

A I can't recall that.

Q What can you recall with respect to the conversations that you did have with Mr.Stott regarding

M. H. Studios as to what you told them?

A The thing I recall is that M.H.Studios again was an off-beat purchase and also for a substantial sum of money. The stock subsequent to that went down, Rolf complained, complained to me and Stott subsequently told me he complained to him about the thing, and, again, I bought the thing more or less on Mr.Galanais' sayso, and when I checked into it, it wasn't right, didn't smell right. So I went to Baerwald & DeBoer, the principal of Baerwald & DeBoer,and I told him he had to take me out because I was getting an awful lot of heat about that stock, and subsequent to that my best recollection is that he wrote a check, I believe, for 70, $75,000 and took out the whole position.

Q Prior to that time when that firm agreed to do what you just said, did you tell Mr. Stott that there was any reason for your investment in M.H. Studios for the account of Dr. Rolf other than as a suitable investment vehicle?

A I am sorry, Ididn't catch a couple of your words.

THE COURT: Read it back.

(Question read.)

A I doubt very much I would have told Mr.Stott that M. H. was a suitable investment vehicle. I believe I told him not to worry about it, it would be taken care of, he wouldn't lose money on it.

Q Did you tell him it was being manipulated?

A No, sir.

Q Did you tell him there was any cornering of the market?

A I doubt that.

THE COURT: Did you tell him why you were in a position as an investment advisor to tell him that the plaintiff wouldn't lose money? Did you give him any basis for your assertion that that would be the result?

THE WITNESS: Your Honor, I don't mean to be facetious, but when I was involved in stocks, particularly manipulations, what have you, the last thing in the world I did was to tell anybody ahead of time that I was going to manipulate the stock.

THE COURT: My question really is, you drew a conclusion?

THE WITNESS: Yes, sir.

THE COURT: And told it to Mr. Stott?

THE WITNESS: Yes, sir.

THE COURT: Unless you have some remarkable powers, Mr. Stott may have wanted an explanation as to why you felt that that was so, that money would not be lost in it by the plaintiff. Did he inquire?

THE WITNESS: The only answer that I could have given him was a vague answer to the effect that the situation is under control, he wouldn't lose money. I did not tell Mr.Stott it was manipulated, I doubt very much I would have told him that stock would get taken out by Baerwald & DeBoer, The only thing I might have mentioned to Stott was, don't worry about it, it was a position where he wouldn't lose money, it was under control.

MR. SILVERMAN: If your Honor please, I think the witness meant Rolf for Stott, and was saying Stott for Rolf because your Honor's question was directed to what he told the plaintiff --

THE COURT: My question was directed to what he told Stott.

THE WITNESS: I did not tellStott M. H. was manipulated. I did tell him not to worry about it, it was under control, with the assumption -- I would have assumed at that time that Stott knew that somewhere or another, however I did it, that I would protect Rolf's interest in it, but I didn't tell him it was manipulated.

The fact of the matter is, when I bought it I didn't realize it was.

Q You thought at that point that it was an investment and that taking into account the market would turn out to be profitable?

A No. I am trying to make it as clear as possible. I had a partner, John Galanais, and he and I did things together and also did things independently of each other. Although he did not have actual control over this account, there were times when he would make an investment decision and say "Aki, buy 5000 shares of M & H Studios," and I didn't debate it with him at that time, I just picked up the phone and said, "Buy 5000 shares." It was not until a later date when we got together that I realized why that purchase was made and in fact there was a manipulation. I did not ask Mr.Galanais at that time if there was a manipulation or not.

Q When you did learn there was a manipulation, did you tell Mr.Stott?

A No, sir.

Q Did you tell Dr.Rolf?

A No,sir. I tried to get him out of the stock.

THE COURT: What happened to M & H thereafter, in general?

THE WITNESS My best recollection is that the stock collapsed and when the stock collapsed Dr.Rolf got very upset and reflected the fact that he was upset to myself and to Stott, and I then found out that in fact it was a manipulation, that Stott had no business owning it and that John had made a deal with the people at Baerwald on the stock and I went to one of the principals at Baerwald and to the best of my knowledge that stock was bought out of Rolf's portfolio in a private transaction by one of the principals of Baerwald without it being recorded as a transaction --

THE COURT: Did the stock ever go through Dr. Rolf's account at Eastman Dillon,do you know?

THE WITNESS: The stock was placed at Eastman Dillon's account, but when it was purchased out I believe it was delivered out and I really don't have a recollection as to where it was delivered out, but --

MR. KELLY: May I see, your Honor, the record will reflect it was received in Eastman Dillon and it was delivered out of EastmanDillon in both instances during October of 1969?

MR. TESSLER: With respect to the record, your Honor, I think it will also indicate on that particular purchase and sale the plaintiff showed a profit of some $20,000.

Q Let me turn to GPI Enterprises and again I ask you --

THE COURT: Before you do, before you turn to that, let me think about this last point made by Mr. Tessler.

Would it be a correct conclusion to draw from your answers so far that but for the Baerwald firm advancing funds to get the plaintiff out of M.H. Studios, Dr. Rolf's investment would have been drastically diminishe

THE WITNESS: Yes, sir.

THE COURT: And all within a short period of time?

THE WITNESS: Yes, sir.

Q With respect to GPI Enterprises, do you recall the fact that that was acquired for Dr. Rolf in his account with Woodcock?

A Yes, sir.

Q When was that stock acquired?

A August 31, 1970.

Q At that time did you have any knowledge that that security was under this "box," as of the time of acquisition?

A Yes, sir.

Q Will you tell me who was involved in the cornering of GPI Enterprises stock at that time?

MR. TESSLER: Objection, your Honor, as to relevance.

THE COURT: Sustained.

Q Did you know who was involved?

A Yes, sir.

MR. KELLY: It seems to me, your Honor, I am entitled to know what it was he knew and what he communicat either to Dr.Rolf or to Mr.Stott?

THE COURT: Maybe, but as of this point I don't think that it tips in your favor. Why don't you pursue it in some other fashion and we will see. Right now he has stated what he knew at the time the purchase was made, he has stated through what firm the purchase was made and you may wish to pursue whether or not what he knew he communicated to Mr.Stott, or not, as you see fit.

Q What at that point, when the purchase was made, did you know with respect to any box on GPI Enterprises securities?

MR. TESSLER: Your Honor, I think that questio was asked and Mr. Yamada answered that he knew the stock was controlled at the time.

THE COURT: It seems to me that was the bottom line on the issue.

MR. KELLY: You mean on direct?

THE COURT: No, by yourself just now, and I made a note about it.

MR. KELLY: What I want to know, your Honor, is apart from the characterization as respects a box, which embodies, as you can see, many elements and attribute what he did know.

THE COURT: Without getting into the particulars of who was involved at this time, you may inquire as to wha he understood that to mean. What state of facts existed as far as he knew that caused him to draw that conclusion.

Q YOu heard that question?

A Yes, sir.

Q Would you answer it?

A Yes, sir. GPI Enterprises was a company that had filed a Reg. A., they were trying to raise $300,00 and they issued 60,000 shares at $5 a share. The company was involved in the premium stamp business and had some sort of association with the NFL and some other sports leagues and it was an interesting company that had some potential and they came to myself and some associates to try to get an underwriter, and I got them an underwriter. The stock of the company, as the underwriter disseminated the news about this underwriting and about the prospects of the company, it seemed to catch the eye of the community that invests in these speculative new issues and a determination was made that since it was only 60,000 shares at $5 a share, what we needed to do was to try to control all the shares, in other words, to sell the stock in a public distribution to people who in fact would not resell into the market as the stock was opened for trading.

I wanted to make sure Dr.Rolf received some of these shares on a new issue, because it was a hot stock and it would open at a premium. I asked Stott to buy this thing and to get Eastman Dillon to purchase it.

He told me, after checking with his syndicate department, that they could not participate in a Reg. A., and particularly one with Provident Securities'undercover because Provident didn't have any capital and was obviously not of the same stature of EastmanDillon. I subsequently had Stott purchase the shares at an account that had been opened at Woodcock for the new issue.

Q Who arranged, so far as you know, to place the order with Woodcock for the purchase of those shares?

A I did.

Q You did?

A Yes, sir.

Q Prior to that point at which you placed that order with Woodcock for the purchase of GPI, what did you tell Mr.Stott respecting GPI?

A I told Mr.Stott that this was going to be a hot underwriting, that I knew the underwriter, that we had very definitely in this case control over it and it would open substantially higher and it was important Rolf get an interest in this and I wanted to see Stott get the commission for this.

Q Did you use the term "box" in defining the situation to Mr.Stott?

A I don't know if I did or not, but I made it ver clear to Mr.Stott in this case that we had control of the stock, of the situation.

Q With respect to the control you spoke of, what it that you told him was the control that you had?

A That it was obviously a very thinly traded stock, that there was only going to be 60,000 shares in the hands of the public and that the public that held the 60,000 shares would be friendly to management and to the underwriter and that the stock was going much,much higher. Here again I did not come out and tell Mr.Stott that the stock is going to be manipulated much higher, but I believe I reflected to him the fact that GPI Enterprises stock was going to be substantially higher.

Q You did not indicate to him anything that would suggest any viewpoint on your part that anything illegal was being done?

MR. SILVERMAN: Objection.

THE COURT: Sustained.

Do you have any idea how long Mr.Stott had been in the securities business? Had he ever discussed that with you?

THE WITNESS: I knew he had been in for a substantial amount of years. At least that was the indication I got from him -- and that he was one of the lar producers at Eastman Dillon.

Q Was the stock of GPI that was acquired sold under a Regu. A. prospectus?

A I believe it was.

Q Did you tell Mr.Stott what GPI did in the way of business?

A I don't know if I did or not. I believe he may have gotten a copy of the red herring.

Q Did you ask him if he approved of your acquisition by Dr. Rolf of GPI stock?

A No, I did not ask him for approval.

Q Did there come a time, Mr. Yamada, when Hair Extension was acquired for the account of Dr. Rolf?

MR. TESSLER: Excuse me, Mr. Kelly. Your

Honor, for the record I would like to point out that on Dr. Rolf's two purchases and sales of GPI stock --

THE COURT: As reflected on?

MR. TESSLER: In the various records -- Dr. Rolf made an adequate profit on those transactions of some $34,000.

THE COURT: Before you move on, Mr. Kelly, let me ask Mr. Yamada this:

Would you explain the circumstances you understood to exist where a stock can be under control and yet that means something other than that there was a box?

THE WITNESS: Yes, sir. GPI is an example of this. We had control of the stock, the stock became public and sold at a premium, and it was slowly being moved up higher. Ordinarily, in the case of a box, one house or two houses have the actual physical possession of all the securities because all their clients in that particular house were the ones that bought them, so that they would know if a stock was sold away from them since that client would have to ask for the stock to be delivered or what have you. In the case of GPI we had the stock cornered and the stock subsequently rose in price to a certain level and completely unbeknownst to myself or the underwriter or anybody else, another group of investors got involved in the company and thought it was exciting on its investment merits, and they bought out the whole box from the control we had, and we just kept selling it to them.

THE COURT: What was the ultimate disposition of GPI stock?

THE WITNESS: The people who initially bought it in the underwriting, bought it in the after market, involved in our corner, ended up selling all their stock an I would say most of the people that I was involved with and the underwriter was involved with came out with a pretty handsome profit.

THE COURT: What is the situation six months later?

THE WITNESS: I can't answer for that.

THE COURT: Three months, four months?

THE WITNESS: After six months I think the company ran into problems and the people that took it from us ran into substantial losses of money. It had an interesting catch to it and somebody else totally independent of myself or anybody else involved in the initial underwriting bought the stock away from us after the stock came out at $5 a share, and I think the first trade was something like $6, and then it subsequently sold between

$10 and $12.

THE COURT: While it was with you?

THE WITNESS: While we had the corner on the stock, and with no effort on anybody's part, totally independent sources ended up buying the stock at prices between, I would guess, $12 and $18.

THE COURT: How high did it go?

THE WITNESS: I think as high as $26, $27.

THE COURT: Thank you.

BY MR. KELLY:

Q There came a time, Mr. Yamada, when Hair Extension was acquired for Dr.Rolf?

A Yes, sir.

Q Can you tell me when that occurred?

A May 20, 1970.

Q Prior to May 20, or prior to the time this order was placed by you, did you discuss that stock with Mr.Stott?

A When I purchased it I discussed it with Mr. Stott.

Q In fact, those shares were purchased in the account at Eastman Dillon, isn't that right?

A Yes, sir, I believe they were.

Q At that point, what were the facts and circumstances known to you that existed that established any manipulation, if there were any?

A There was a substantial manipulation going on in Hair Extension Centers. It was being manipulated in conjunction with other entities. The purchase of the stock by Dr. Rolf was an effort to free ride on the manipulation to take place and during the course of the manipulation Dr. Rolf, I believe, sold the stock and sold it for a profit.

MR. SILVERMAN: I object, your Honor, to the last part of that.

THE COURT: Does that mean that you know to the contrary or is it a technical point?

MR. SILVERMAN: I know he sold some of the stock, 2000 shares out of the 5000, and he held 3000 shares until the end.

THE COURT: Strike the last answer. You can pursue it in some other fashion.

Q At the time that you ordered the purchase of this Hair Extension, what were the facts and circumstances known to you establishing a manipulation with respect to this security?

A Well, substantial sums of stock were being bought at a very low price and placed overseas and there was to be a substantial amount of buying of the stock to manipulate the stock upwards and I saw an opportunity for Dr.Rolf to profit, and he purchased some 5000 shares with the idea he would be able to sell it as it was going up and, unfortunately, he got caught with -- he sold some, but got caught with the balance. What I was trying to do for Dr.Rolf was to free ride the manipulation.

Q Did you have any part or participation in the manipulation to whichyou refer?

A Yes, sir.

Q Were you a participant in that manipulation activity on the day that you directed that Hair Extension b acquired?

A I don't mean to be evasive, but I don't know if I was that particular day. I certainly was aware of it at that time. I wouldn't have bought the stock othe wise.

Q In the discussion with Mr.Stott did you tell him there was a manipulation in process?

A No,sir, I did not tell him there was a manipulation.

Q Did you tell him that there was a box?

A I again told Mr.Stott that -- this particular stock caught his eye, as it did several other people, because it has a peculiar name. He asked me about it and we discussed the fact that the stock was going higher and don't worry about it, there would be no problem, but to answer your direct question, I did not tell him there was a manipulation.

Q Or a box?

A I don't recall saying that.

Q What did Mr. Stott tell you with respect to Hair Extension, if he told you anything?

A He didn't say anything, other than he sort of laughed, I guess, at the name, and sort of wanted to know if it would be all right, and I said, "Yes, he will make a profit on it."

Q Did you make that statement essentially as a prediction or as a guarantee?

A I made it more as a prediction than a guarantee.

Q Do you recall when shares were sold for Dr. Rolf's account of Hair Extension?

A August 6, 1970.

Q Who directed the amount to be sold?

A I guess I did.

Q Do you have any present recollection as to why you didn't sell it all?

A Because the stock was at that time, if my recollection is correct -- there was a lot of buying going on to try to manipulate the stock upward, and what I was doing was filtering Rolf's stock into the buying, and you couldn't filter in 5000 shares. A thousand, 2000 shares was possible, but not 5000 shares. In fact, the peo who were the direct participants in that manipulation found out that Rolf was selling the stock, or that Eastman Dillon was selling the stock, and they got sort of upset with me, in the sense that if EastmanDillon was selling the stock they had a pretty good idea that it was Rolf.

Q Did you tell Mr.Stott about the dissatisfaction of those people?

A No,sir.

Q Did there come a time, Mr. Yamada, when Health Evaluation was acquired for the account of Dr. Rolf?

A Yes, sir.

Q Can you tell me when that occurred?

A Health Evaluation was bought May 20 -- no, April '70.

THE COURT: 1970?

THE WITNESS: Yes.

MR. SILVERMAN: I would like to see what the witness is reading from, your Honor.

THE COURT: Surely. It should be identified for the record.

MR. KELLY: I did, your Honor.

THE COURT: Well, you can identify it again.

THE WITNESS: April 14, 1970.

THE COURT: Looking at what document?

THE WITNESS: CC.

THE COURT: In evidence?

MR. KELLY: Yes, sir. The other documents, and again I repeat, are Exhibit BB and there is one more, Exhibit DD.

THE COURT: You indicated at the very beginning you were showing the witness BB, CC, DD, all in evidence?

MR. KELLY: Yes. Those are Dr.Rolf's records reflecting the purchases and sales in his account which are helpful in determining when, so that I can get to the point of the when.

THE COURT: All right.

Q I was asking you about Health Evaluation and you said they were acquired for Dr.Rolf's account in April 1970?

A Yes, sir.

Q 2000 shares bought?

A Yes, sir.

Q At the time that you directed the purchase of those shares, what were the facts and circumstances known to you with respect to any manipulation?

A Health Evaluation System, again I was aware a manipulation was going to take place and it was an opportunity for Dr.Rolf to free ride.

Q At this point did you understand the manipulation had not yet commenced?

A That's correct.

Q And did you know there was going to be a manipulation thereafter?

A Yes, sir.

Q Did you participate in any manipulation with respect to that stock?

A Yes, sir.

Q Were you indicted for that?

A Yes, sir.

Q Did you plead guilty to that?

A Yes, sir.

Q What did you know with respect to Health Evaluation as of the time you directed its purchase in Dr.Rolf's account?

A I knew there was going to be a manipulation taking place in Health Evaluation, that the stock would go substantially higher, that there would be fairly active trading in it, and that one of the funds would end up buying back the stock that was bought at a cheaper price.

Q Which fund?

A I guess it was Armstrong.

Q Was there existing in April a box, as you defin it before?

A In Health?

Q Yes.

A Yes, sir.

Q Let me be sure, Mr. Yamada, that you understood my question. I asked whether or not there was a box in April when you directed the purchase of the shares. I just want to be sure I understand you correctly.

A The shares, according to these records, were purchased on the 14th of April. There was a substantial amount of the publicly-traded shares of Health Evaluation on or about that time that was purchased in one particular account and sent overseas. Now, I don't have the figures on that particular transaction to tell you precisely when it was, but I was aware it was going to take place, or it m have already taken place, but I can't answer that precisely.

Q Do I understand that at the time you placed that order you had a discussion respecting Health Evaluatio with Mr.Stott?

A Yes, sir.

Q Did you tell him there was any manipulation?

A Again, I didn't use the word "manipulation," no, sir.

Q Did you tell him there was a box?

A I told him not to worry about it, the stock was going to go much higher, I knew people working in the stock.

Q Did you indicate that to him as a prediction or a garantee?

A I told him as a prediction.

THE COURT: Well, did you say,"This is a prediction, Mr.Stott"?

THE WITNESS: No, I didn't say to him that I am guaranteeing the stock would go up. I did not say it was a prediction, no, sir.

Q What did you tell him beyond that with respect to Health Evaluation?

A Just in terms that the stock was going higher, "Don't worry about it, I know people who are going to take care of it." Again, you know, you just didn't tell somebody "I know there is a manipulation taking place and we can benefit by the manipulation." You didn't have to tell somebody who was in the street that, you know. You didn't tell him, you just didn't do that. What I did say was that the stock would go higher, that it was under control.

Q Haven't you made that kind of statement with respect to securities that were not being manipulated?

MR. SILVERMAN: Objection.

THE COURT: I will allow it.

A Not in that reference, no, sir.

Q What was the distinction?

A I alluded to the fact that factors other than basic investment values would cause those stocks to go up. If and when I said that about other stocks, I felt strongly that the fundamentals may carry itself, but there was very definitely an allusion on my part to Stott in the case of Hair Extension and Health Evaluation that the value was not in any fundamental investment sense, but there were other reasons why the stock would go up.

Q Isn't that frequently the case with respect to many stocks, namely, that the market itself can generate a demand without necessarily any regard whatever to fundamentals?

A Yes, sir.

Q Is it that kind of a communication that you gave to Mr.Stott?

A No, I don't believe it was that. There are often technical factors that cause a stock to go up having no bearing on fundamentals, but that was not the kind of information I was trying to convey to Stott at that time.

Q Can you give me the words you gave to Mr.Stott?

A I am sorry, I can't. I don't recall.

Q You are clear that you were not trying to communicate to Mr.Stott the fact that there was a manipulation?

MR. TESSLER: Objection. I don't think that was the test.

THE COURT: Sustained.

Does a control group achieve manipulation in the same fashion as a group that has the box?

THE WITNESS: It can, yes, sir.

THE COURT: What?

THE WITNESS: Yes, sir, it can.

THE COURT: Is it that it can or that it is what happens invariably, and if it doesn't happen invariably, explain --

THE WITNESS: Very often manipulations occur in securities where management is not at all aware, the control group is not at all aware. There are times when management is aware and participates in it, in moving a particular stock up, by disseminating false information, by touting the stock, etc. That would be your two distinctions.

THE COURT: Once again, the one being where --

THE WITNESS: Where a manipulation takes place without the control group being aware of it at all.

THE COURT: All right.

THE WITNESS: And another place where the contro gorup is very much aware of it and participates along with the outside people.

THE COURT: In the industry, to use the expression "control group" is that to imply manipulation?

THE WITNESS: NO,sir.

THE COURT: What does it imply?

THE WITNESS: Control group implies the fact of the management -- the management or the major stockholders in that company. That is what the control group implies.

THE COURT: With reference to whether the market moves one way or the other, what does it imply?

THE WITNESS: If you are using it in terms of the control group of public shareholders, then that woul be a manipulative phrase.

THE COURT: So that if you say to someone in your business, "This is a good stock to buy, there is a control gorup, it is going to go up," what have you reall said? Forget about references to box, or whatnot.

THE WITNESS: Unless you clarify, as you have asked me, what I mean by control group, you have not said very much.

THE COURT: If you are talking to another person in the business.

THE WITNESS: Oh, if you are talking to somebod in the security business, and you say, "Look, the stock is under control" --

THE COURT: And it is going up.

THE WITNESS: What in fact you are saying is there probably is -- the publicly-held shares have diminishe substantially and that there is no supply around. That is what you are implying.

THE COURT: And?

THE WITNESS: And that the stock will be manipulated upward.

THE COURT: All right, Mr. Kelly.

BY MR. KELLY:

Q If there is a public offering of securities that come to sell at a premium over the offering price, is it not is it not a fact that the securities that have been sold and placed may be held by those who bought because of their expectation of an increase in price beyond that which already prevails?

A Very definitely.

Q And if a newly-issued security is particularly attractive is it not likely that the bulk of the first investors will retain their holdings with the expectation of a greater profit?

MR. TESSLER: Objection.

THE COURT: I will allow it.

A There are many, many instances where that has happened and people have profited immensely from that.

Q Isn't it true in many, and perhaps most, instances those who are such investors have an interest in holding it for at least six months for a long term capital gain?

A I would say you have to categorize that -- there are significant amounts of people looking for long-term capital gains, but there are also plenty of people looking for a free ride.

Q And such a condition,with the resulting increase in price, can occur without regard to any manipulation or control?

A Very definitely.

Q And isn't it a fact that at this time the mere issuance of a new issue frequently produced a premium over the offering price?

A If there was anything catchy about it, yes,sir.

THE COURT: In that situation Mr. Kelly has described, is there in those situations what is called a control group?

THE WITNESS: If you create one, there is, and in the case of GPI Enterprises there was a very definite concerted effort on our part to not make the 60,000 shares of new issue stock available to the general public. It was made available to only people within our group. In fact, when GPI became public, instead of raising $300,000, they probably could have raised close to a million dollars, there were that many people interested in buying that stock, and what we did was not sell it to people because we were afraid too many people would free ride it.

Q During that period of time is it not the fact that with great frequency on new issues there were over-subscriptions in the sense that more people were seeking to get the stock than there was stock to be acquired?

A Again, you know, you would have to take it almost on an individual basis, but when there were stocks underwritten by certain houses, I would say that is the case. There were certain cases that had "hot" stocks.

Q Are you suggesting that there is some secret or known code words by which some member of the industry can communicate to another one that there is a manipulation going on without saying that?

A Well, I think to the contrary. What I am saying is that oneof the things you don't say is that there is a manipulation going on. You try to avoid using such a term.

THE COURT: If you were in the industry and one of your colleagues said to you"The stock will go higher, don't worry about it. I know people who are going to take care of it," what do you understand from that?

A Depending on who it comes from, I would understand there would be a manipulation or a concerted effort to move the stock up.

Q What do you mean "depending on whom it came from

A Again, depending on who it came from and the stock involved. If Merrill Lynch said to me they were going to push AT&T, I don't believe there would be a manipulation, but if there was somebody from a small, over-the-counter securities house that said about an obscure house, they were going to push the stock, don't worry about it, please?

MR. TESSLER: Your Honor, just for the record I would like to point out contained on Plaintiff's Exhibit 9 in evidence -- I am sorry, your Honor, I don't have the exhibit number 9, but I think the record will clearly show that on Dr.Rolf's purchase and sale of securiti of Health Evaluation the plaintiff made a profit of $16,186.

MR. KELLY: May I have the last question read?

(Question read.)

MR.KELLY: I recall the answer, your Honor.

BY MR. KELLY:

Q Mr. Yamada, there came a time when there was bought Synchronex. Can you tell me when that was bought?

A January of 1970.

Q Will you check that again, Mr. Yamada?

A Date of purchase, it says January of 1970.

Q Will you look at the 1969 year and see if there were purchases earlier, in October.

A Yes, sir, October 17.

Q October 17?

A Yes, sir.

Q Did you have any knowledge of the facts and circumstances of the time of the purchase suggesting there was anything manipulative about that security?

A At that point in time, no, sir.

Q Did there come a point when you did?

A No,sir.

Q Did you have a hand in the manipulation?

A Yes, sir.

Q When did you commence your participation in any manipulative activity?

A It was later in 1970. It was, Iwould guess, toward the end of 1970.

Q Prior to the time that you directed the acquisition of those shares, did you have any discussion regardin them with Mr.Stott?

A Not to my recollection.

Q At any subsequent time did you have any discussion with Mr.Stott respecting Synchronex?

A I don't recall,sir.

Q Did there come a time when you directed the acquisition of shares of Visual Sciences?

A Yes, sir.

Q Did you direct the acquisition of the shares of VisualSciences initially from Provident?

A Yes, sir.

Q Was that on a public offering, with a registrat statement, do you recall?

A Yes, sir.

Q At the time that you directed that that stock be acquired for Dr.Rolf in his account with Provident Securities, did you know of anything manipulative then?

A I knew that it was a hot stock.

Q I would take it that you would agree that the mere existence of a hot stock suggests nothing manipulative, illegal or improper?

A That is probably correct.

Q Is it fair to say a hot stock is any stock which being sold at a given offering price within reasonable promptness after the offering goes to a premium in the sense that the open market price is above the offering price?

A That's correct.

Q Is it not true that that can happen whether the stock being offered is that of American Telephone & Telegraph, General Motors or Visual Sciences?

A That is correct.

THE COURT: Is that what happened in your instance with Provident?

THE WITNESS: In which stock?

THE COURT: Visual Sciences.

THE WITNESS: Yes, sir. Visual Sciences was a hot stock which was hot not because of any manipulative scheme. A manipulation did take place in Visual Sciences but that was not the reason why the stock was initially hot.

Q And there was no manipulation of which you were aware until some time in 1970 or after?

MR. SILVERMAN: Objection.

THE COURT: You may answer.

A It was in 1970 and in 1971.

Q You first became aware of it after the first acquisition?

A That's right.

Q You are aware that there was another purchase of a thousand shares of Visual Sciences on December 4, 1970?

A Yes, sir.

Q Would you say at that point, December 4, 1970, that you were aware of any manipulation with respect to the stock of Visual Sciences?

A Yes, sir.

Q At that point you were aware of it?

A Yes,sir.

Q Pricr to the first purchase through Provident of the Visual Sciences stock for Dr.Rolf's account, did you have any discussion with Mr.Stott?

A I believe I asked Mr.Stott if EastmanDillon wouldn't participate in this underwriting, and again it was turned down.

THE COURT: Can't hear you?

THE WITNESS: Again, it was turned down.

Q Let me see if I can get clear what that means. If a stock is being publicly offered in a distribution of stock, the general method by which that is done is to form a group of what are called underwriters, isn't that correct?

A Yes, sir.

Q And those underwriters, generally speaking, agree to buy the stock from the issuing companyand resell it to the public at an agreed upon fixed public offering price?

A Yes, sir.

Q In addition to the underwriters who directly buy the stock from the issuing company, or if there were shareholders selling, there are in addition selling group members?

A Yes, sir.

Q And the selling group members really are not those who buy the stock from the company but agree to sell the stock for the underwriters? Is that a fair statement?

A Yes,sir.

THE COURT: You had asked if Eastman Dillon would take part in the selling group.

THE WITNESS: I asked Stott if he would take part in the actual underwriting part.

Q You would agree with respect to a major investment banker they have certain rules and standards with respect to the kind of participation they will take in a public offering?

A Absolutely.

Q And I take it you would agree that Merrill Lynch or Eastman Dillon, orBache, or their counterparts woul not normally be expected to take part in an underwriting in which Provident Security was the manager of the underwriting group?

A That's correct.

Q Before an underwriting group is put together and announced, is it fair to say that with respect to such a public offering people of your expertise and knowledge would know that the stock was going to be offered to the public but not necessarily know who was going to be in the underwriting or selling group?

A That is correct.

MR. TESSLER: Your Honor,I hate to come in at this point, but I think we are getting pretty far afield from the issuesin this case.

THE COURT: You may be very close to it, Mr. Kelly. Is there much more?

MR. KELLY: No.

Q If you are interested in a stock that is being newly issued and which you think might be hot or go to a premium, you would normally go to people to see whether they will be or will become underwriters in that offering?

A In stocks of this nature, nine times out of ten if there is word out that it will be a hot stock most peopl come to the lead underwriter. If it is not a hot stock, everybody sort of shies away from answering the telephone.

Q Did you go, with respect to Visual Sciences, to Mr. Stott to ask him if he would arrange to have Eastman become an underwriting or selling group member in that offering?

THE COURT: He said that he did, Mr. Kelly.

Q He did, sir.

A Yes.

Q Do you know when that occurred with reference to the stock acquired in November of 1970?

A The stock Visual Sciences was, again, very hot. Prior to its underwriting it was reasonably well known on the street that it was a hot underwriting, and in this particular case it involved not just underwriters of the nature of Provident Securities, but some reasonably--maybe not an Eastman Dillon or Merrill Lynch, but not just over-the-counter NASD members, but some members of the New York StockExchange very definitely expressed an interes in it. If my recollection is correct, some took part in it. So that when I was told I was going to get a fairly decent allocation of it, and I gave some of it to Dr. Rolf, I wanted,again, Michael to accrue the commission benefits of it, and I asked him to have Eastman Dillon -- to see if Eastman Dillon would participate and the answer was no.

Q He told you they would not participate as underwriters?

A That's correct.

Q At this point, by which I mean prior to the placing of the order to buy these shares, did you discuss with Mr.Stott the nature and character of this security as an investment vehicle?

A My recollection is I was particularly close to this company and I believe I discussed with Mr.Stott what the company's business was.

Q Do you recall what you told him?

A I told him that it was in an exciting new field, that the company was unlike a lot of new issues, reasonably well-financed -- was reasonably well-financed prior to this new issue, that there were a lot of important entit-es backing it and that it seemed like a very interesting investment opportunity.

Q Did you ask Mr.Stott if he agreed that these securities should be bought for Dr.Rolf?

A No, I didn't ask him if he agreed.

Q When you directed the purchase in December of 1970 of an additional thousand shares, am I correct in recalling thatyou then knew about manipulative activities that you had not previously been aware of?

A Yes.

MR. TESSLER: Objection,your Honor. The question was asked and answered.

MR. KELLY: I would agree. I am just trying to get to a date.

Q What did you know at that time with respect to any manipulative activity?

A Well,I knew that the underwriter was trying to get a -- I hate to use the word -- a "box" on the stock in the after market to control it.

Q Was Provident Securities making a market in the stock?

A Yes, sir.

Q By that am I correct in understanding that they stood publicly willing before professional broker-dealers to buy or sell these securities?

A Yes, sir.

Q Did you know that their position was long in these securities prior to December 4, 1970?

A That their position was long?

Q Yes.

A Yes,sir.

Q Would you say that they were substantially long?

A Yes, sir.

Q Did you get that information from Provident?

A Yes.

Q Did you prior to December 4, or when at or around that time, when you directed the purchase of Visual Sciences, have a discussion with Mr. Stott respecting Visual Sciences?

A Excuse me, what time?

Q In November you had the stock acquired outside of Eastman and then in December there was purchased a thousand shares in the Eastman account on your direction --

A Did I have a talk with Mr.Stott regarding that?

Q Yes.

A I don't recall.

Q Did there come a time when you directed the purchase of shares of Tranquilaire?

A Yes, sir.

Q For the account of Dr.Rolf?

A Yes, sir.

Q Was that acquisition made in Dr.Rolf's account at the Woodcock brokerage firm?

A Yes,sir.

Q Are you aware that that stock was thereafter delivered into Dr.Rolf's account at Eastman Dillon free, free in the sense that no payment was made out of that account for those securities?

A I would have to look at the records.

Q YOu don't remember now?

A I don't remember, no, sir.

Q Can you tell me when theTranquilaire stock was ordered by you to be bought by Woodcock for the account of Dr.Rolf?

A The 17th of August.

Q 1970?

A Yes, sir.

Q At the time that you gave that direction to

Woodcock to buy those shares, am I correct in understanding that that was a new issue under a prospectus?

A Yes, sir.

Q Was Woodcock the managing underwriter?

A No, sir.

Q Were they an underwriter?

A Yes, sir, or a selling group member.

Q One or the other?

A Yes, sir.

Q In August, when you directed the acquisition of those shares for Dr.Rolf, were you aware of any facts or circumstances that led you to believe there was any manipulative activity?

A No, sir, just a hot underwriting.

Q Prior to directing Woodcock to acquire those shares for Dr.Rolf, did you have any discusson with Mr. Stott regarding Tranquilaire?

A I believe I asked him to participate in it as a selling group or underwriter but, again, he couldn't.

Q Were you in those instances in which you made that request of Mr.Stott interested in seeing if you could get the firm of Eastman Dillon to participate in some of these new issues that were being effected by associates in the brokerage business with which you had an acquaintance or relationship?

A It didn't matter to me whether Eastman Dillon participate or not. My only interest in having Eastman Dillon participate was to meet the agreement that I had with Mr.Stott regarding commissions.

Q The agreement you had with Mr.Stott to which you refer I take it is the agreement that the transactions for Dr.Rolf were to be cleared through the account with Eastman Dillon?

A Agreement is not the right word. I would say it was the understanding I had to generate as much commissio business -- whatever commission business was generated in Dr.Rolf's account, a significant amount of it would accrue to Mr.Stott. If he had moved from Eastman Dillon to some other house, I would have done the same thing, requested that house to come in.

Q Instead of Eastman Dillon?

A That's right.

Q At the time that you directed -- I may have asked you this and if I did, straighten me out -- at the time you directed the acquisition of Tranquilaire, did you know of any facts and circumstances that there was any manipulation?

A No, sir.

Q Just that it was a hot issue?

A That's right.

MR. TESSLER: Your Honor, I think the line of questioning assumes a fact there is no testify or evidenc of, and that is that the securities of Tranquilaire were manipulated and I don't think the witness testified to that.

MR. KELLY: That is correct. I am just checkin it.

THE COURT: I don't think there is any problem with it so far.

Q Other than discussions that you had with Mr. Stott asking if Eastman would participate in the underwritin of Tranquilaire, did you have any other discussions with him prior to the time you directed Woodcock to buy the stock for Dr.Rolf?

A Not to my recollection.

MR. KELLY: I would find it convenient, your Honor, at this point to adjourn. I will abide by your Honor's instructions, of course.

THE COURT: We can adjourn now.

We will resume in the morning at ten o'clock, with Mr.Yamada, and continue cross-examination. It is my expectation that the plaintiff's case is apt to be concluded probably early in the morning, depending upon the extent of cross-examination.

Are you apt to have any questions of Mr. Yamada, Mr.Tessler?

MR. TESSLER: I would doubt my cross would be as much as ten minutes,your Honor.

THE COURT: In that event, Mr. Kelly, you should be prepared to go forward with your case tomorrow.

MR. KELLY: I will, sir.

MR. SILVERMAN: I want to make sure Mr. Stott will be next, so that I will be prepared to cross-examine him as soon as direct is over, and I wonder if I can get some idea from Mr. Kelly if that is going to be on tomorrow.

THE COURT: Would you share with us your initial order of witnesses?

MR. KELLY: I would think I might have one short witness and then Mr.Stott.

So that I would say within 15 minutes of my opening, Mr.Stott would take the stand.

MR. SILVERMAN: May I also inquire as to how long Mr.Stott will be on so that I will know whether I can begin my cross tomorrow?

THE COURT: How long do you expect your

examination of Mr.Stott to take, roughly?

MR. KELLY: I would guess less than two hours. It is difficult,your Honor, but I think something in that dimension.

THE COURT: Thank you. Good day.

(Adjourned to Thursday, July 8, 1976, at 10:00 A.M.)

David E. Rolf

vs. 73 Civ. 2967

Blyth Eastman Dillon Co., Inc.
Akiyoshi Yamada & Michael Stott

New York, New York.
July 8, 1976 - 10:00 A.M.

(Trial resumed.)

AKIYOSHI YAMADA resumed.

THE COURT: Mr. Yamada,you are still under oath.

THE WITNESS: Yes,sir.

THE COURT: This is resumption of cross-examination of Mr. Yamada by Mr. Kelly.

CROSS-EXAMINATION (continued)

BY MR. KELLY:

Q Mr. Yamada, as with yesterday, I was going to put before you Defendants' Exhibits BB,CC and DD in evidenc

A Yes,sir.

Q You will recall those?

A Yes, sir.

Q Did there come a time, Mr.Yamada, when there was an acquisition under your direction of Consolidated Oil & Gas to the account of Dr.Rolf?

A Yes, sir.

Q Could you tell me when that acquisition was made? I think you will find it in 1969, in the summer.

A Yes, sir. The initial purchase was made June 25, 1969.

Q Do you recall your acquiring Consolidated Oil & Gas at that time for the account of Dr.Rolf through Lynch Jones?

A Yes,sir.

Q Do you have any recollection of why it was that Consolidated Oil & Gas was purchased in Dr. Rolf's account with Lynch Jones rather than in Dr. Rolf's account with Blyth Eastman Dillon?

A Yes, sir. As I believe I stated yesterday, I had been using some office space at Lynch, Jones & Ryan prior to my opening my offices on Madison Avenue, and they enabled me to use an office, partly use secretarial services, telephones, etc., and also some of the principals in the firm were friends of mine, they had been helpful to me in the past, and I felt that I had an obligation to give them a certain amount of commission business.

Q Mr. Yamada, at that time am I not correct in understanding that commissions in terms of their rate were fixed?

A Yes, sir.

Q At that time, therefore, the amount of commissio charged would be the same regardless of which broker-dealer the transaction was effected through?

A Yes, sir.

Q At the time of the acquisitions that were made of Consolidated Oil & Gas under your direction, did you know of any facts and circumstances that would suggest any manipulation or box or cornerning of Consolidated Oil & Gas?

A To the best of my knowledge, there were absolute no irregularities involved with that stock purchase.

Q Prior to the acquisition of Consolidated Oil & Gas at Dr. Rolf's account with Lynch, Jones, did you discuss Consolidated Oil & Gas with Mr.Stott?

A To my recollection, no.

Q Do you have any recollection of discussing Consolidated Oil & Gas with Mr.Stott at any time?

A I have no recollection.

Q Did there come a time, Mr. Yamada, when there was an acquisition of Viatron Computer --

A Yes, sir.

Q -- for the account of Dr.Rolf?

A Yes, sir.

Q Is it your recollection that that was bought at Shields?

A I am not sure whether it was Shields or Laird.

Q But it was not at Eastman Dillon?

A That's correct.

Q Was it a new issue, as you recall?

A It was a new issue of bonds.

Q Debentures?

A Yes, sir.

Q At the time that you directed the acquisition of those shares in an account of Dr.Rolf, at whichever of the two other firms it was, did you have any knowledge of facts and circumstances that would indicate there was any impropriety going on in the marketplace as to that stock?

A Not to my knowledge.

Q Did you prior to the acquisition of that stock for the account of Dr.Rolf discuss that security with Mr.Stott?

A I recall having some discussion with Mr.Stott regarding Viatron. I don't recall whether it had to do with whether Eastman Dillon was part of the syndicate or whether it was general market discussion. At that time-- and when I say "that time," I am talking about late December of 1969 -- Viatron was one of the most talked about stocks on Wall Street in this area, and I believe I did have some general discussion about the company and/or the underwriting with Mr.Stott.

Q Do you recall whether that was before or after you placed an order for Dr.Rolf?

A To my best recollection, I believe it was before

Q Do you recall what he said to you with respect to Viatron?

A I received no -- nothing more than a general conversation between the general market indication or talk. We discussed about -- there was some talk as to the size of the underwriting. I believe the size was originally intended to be something like 15 or 20 million dollars worth of debentures, and then it was incraased and then decreased, and there was some talk about what kind of premiums the conversion would be, and this kind of thing. And I think this was the kind of information that I was seeking from Mr.Stott.

Q In other words, you were seeking what he knew about the marketplace and the indications of the market with respect to the attractiveness of this coming issue?

A Yes, sir.

Q Itake it he did not have any discussion with you having to do with the capacity or activities of the company as a company, but only the conditions in the marketplace?

A That is correct.

Q Did you ask him whether or not this stock should be acquired for Dr.Rolf?

A No, sir.

Q I would like to show you, Mr. Yamada, Plaintiff's Exhibit 3 in evidence. You may recall, Mr. Yamada, that, with respect to the first sentence, and then further as to the first paragraph, we have discussed this letter before?

A Yes, sir.

Q I would like to call your attention to the last paragraph on the first page of that letter and specifically the item marked Number 1, where reference is made by Dr. Rolf to the use of special situations, for want of a better term.

A Yes, sir.

Q Could you tell me what the substance of the discussions was that took place between you and Dr.Rolf regarding that matter?

A Well, the term "special situations" as discussed between Dr. Rolf and myself regarded the possibility of finding undervalued companies, not in the traditional sense, but extremely undervalued companies, asset-wise, where an asset might be extremely undervalued; some sort of change in the structur e of a particular industry, a dividend of concept stock, this kind of thing. And the intent was to try to find these types of companies.

Q In your discussions with Dr.Rolf as respects that, did he indicate that that was one of the investment activities in which he wished you to involve him?

A Well, that was one of the points that I felt -- that was one of the points that I told Dr.Rolf that I could contribute as a positive input to his portfolio strategy.

Q Did he indicate that he favored that kind of input?

A Yes,sir.

Q Could you tell me with respect to Item 4 on that same paragraph what discussion occurred between you and Dr.Rolf regarding Founder stock?

A Are we talking about point No.4 or No. 2?

Q At this moment I am speaking of No. 4.

A Okay. In regard to this, there were certain companies that I had been interested in, some of which were getting readied to go public, some had gone public, etc., which I was due a certain amount of inside stock, unregistered securities. And I told Dr.Rolf that I would do my best to see if I couldn't get some of those stocks for him to make up for some of the losses that he had incurred.

Q Could that kind of an investment also be defined conventionally as a venture capital investment?

A Well, it depends on the amount of money that is exposed by Dr.Rolf. If in fact he has to spend $100,000 for an investment, let's say at 20 per cent of market value, yes,that is the case. But it was my intend under Point 4 that he would not have to spend money, that in fact it would be in essence a nominal sum of money that he would have to put up.

And when I say nominal, we are talking about a penny a share or something in that regard.

Q You would call an investment venture capital where the amounts involved were more substantial than the type of thing that you have just defined?

A Yes, sir.

Q With regard to Item No. 2 in this same paragraph, Mr. Yamada, couldyou tell me what discussion was had with Dr.Rolf regarding Tranquilaire Mental Health?

A Mr.Kelly, No. 2 sort of baffles me, because I don't have a recollection as to discussing Tranquilaire

Mental Health. I do recall -- I believe there is a typographical error, at least on this thing. It says CPI. I believe he meant GPI.

Q Did you discuss GPI with Dr. Rolf in connection with this discussion of your plan?

A Yes, sir.

Q But you don't recall whether Tranquilaire was discussed or, if it was discussed, what was said?

A That is correct.

Q Do you recall what was said in this discussion withDr. Rolf as to GPI?

A Well, there was some talk of -- well, there wasn't some talk -- there was an understanding that I was to become involved with the company, and in so doing I was to receive either inside stock or warrants, etc. And that what I intended to do with Dr.Rolf was to give him some of those.

Q With respect to the conversations that occurred between you and Dr. Rolf, which you referred to in this letter and which we have just discussed, can you tell me when those discussions took place?

A Mr. Kelly, there were,I would say, numerous discussions headed toward this time period in September. These discussions were discussions between Rolf and myself, Rolf and Stott, Mr.Stott and myself, all having to do with somehow raising the value of his portfolio, where he had taken a substantial loss. And it would be difficult for me to pinpoint a particular time when I spoke to him.

The only thing that I can say is that it was definitely several occasions.

Q And occurring,I take it, therefore, over the time span of May-June, 1970, to September 1970, or am I wrong there?

A I would say you are correct.

THE COURT: Would you excuse me. The substanti loss that you are speaking about, you are referring to a substantil loss which existed with respect to what point in time?

A Throughout the time period of 1970. When I am referring to substantialloss, I am referring to the difference in the asset value of his portfolio in April of 1969 to this September 2nd date as of this particular letter.

THE COURT: The loss from the time, essentially you took over?

THE WITNESS: Yes, sir.

THE COURT: Until this later point in time?

THE WITNESS: Yes, sir. I would say so --

Q Let me be a little more specific about that. I ask you to look at the first paragraph, the third sentence of thisTrial Exhibit 3, and call to your attention its statement, "We invested about $650,000 into Delanair and Monarch--" .

A Yes, sir.

Q " 00 on the proposition that Delanair will come out at 18 and Monarch will double."

A Yes, sir.

Q does that not suggest to you that the losses to which you refer were the losses resulting from the investments inDelanair and Monarch?

A Not precisely that.

Q Can you fix it more precisely?

A Yes, sir. Dr.Rolf was constantly calling me, as I stated. And actually he was calling me before May-June of '70, he was calling me earlier in the year. Because many of the trading, the stocks that we had bought and sold for his account, hadn't worked out as well.

Now, in relation to this statement about investing all his money in Delanair and Monarch, he was concerned about its being tied up, meaning --

Q That it couldn't be used for trading?

A That's right. Reasonably illiquid. And he wanted to know when he would be freed up.

There is no question that I did tell Dr.Rolf that in the case of Delanair that he would be able to free up his stock and that there were vague assurances made that he would sell it at a substantial profit.

Q Mr. Yamada, I would like to show you Defendants' Exhibit K in evidence and ask you if you recall receiving that letter fromDr.Rolf.

MR. SILVERMAN: Your Honor, I don't believe K. is in evidence.

MR. LYON: K is not.

MR. SILVERMAN: Then I object to his showing the witness a document not yet in evidence.

MR. KELLY: I offer it in evidence.

MR. SILVERMAN: I object.

THE COURT: On what ground?

MR. SILVERMAN: It hasn't been authenticated.

THE COURT: His question may have the effect of changing that.

MR. SILVERMAN: If he authenticates it I will remove my objection. Right now it is not authenticated.

THE COURT: Mr. Yamada, if you can --

MR. KELLY: It is stipulated to, your Honor, in the pretrial stipulation as to its authenticity.

The only question remaining on the pretrial order is its relevance. But I am perfectly willing to authenticate it on the question now pending before the Court.

THE COURT: Do you remember getting that document from someone, Mr. Yamada?

THE WITNESS: Yes,sir.

Q I didn't hear your answer.

A Yes, sir.

THE COURT: Received in evidence.

xxx (Defendants' Exhibit K was received in evidence.)

Q With respect to the reference in the paragraph in the first page numbered one as to the Seljo situation, did you send to Dr.Rolf the audited statement that he requested?

A No,sir.

Q With respect to Paragraph C, did you complete and forward to Dr. Rolf the Monarch-Seljo agreement?

A I don't think so.

Q Do you know what that agreement was?

A I believe that he was referring to the agreement whereby Monarch would be valued at, I believe it was, $100,000, and that he would be given a put out of the partnership I believe at $150,000.

THE COURT: A little louder, please.

A He would be given a put out of the partnership at $150,000.

Q With respect to paragraph Number 2, did you provide Dr. Rolf with financial statements which he requested

A I believe I made a request to D.H. Blair to do that, and I believe they did make some sort of whatever publicly was available to him. I have no recollection whether I personally did or not.

Q Is it your recollection that he was furnished what was publicly available?

A I believe that he -- again I am --

MR. SILVERMAN: I object. It doesn't show that there is any personal knowledge that this witness knows what was furnished to him. He said that he asked D.H.Blair to send him information.

THE COURT: I am afraid I missed it. Let's go back to 2A. As I understand Mr. Kelly's question previously, did you send a complete financial statement and all the information available with regard to Delanair?

A I did not, no, sir.

Q Do you know whether anybody else did?

A It is possible.

Q But you don't know of your own knowledge?

A No, sir.

Q There is reference in the next page at the top in the paragraph numbered 3 to your financial projection on the items thereafter listed, what were the financial projections of yourself to which Dr.Rolf was referring?

A He was referring to the reasons, the investment merits of purchasing those stocks, what the financial output in terms of earnings would be for the various stocks listed.

Q Did you give to him, orally or inwriting, a projection as respects those four stocks?

A I have no recollection.

Q Have you any recollection of what the reference was in paragraph 3D toDr. Rolf's desire to receive 5000 shares of founders stock of Firefly?

A I believe that that refers to Point 4 of the letter on September 2, 1970, where we discussed the possibility of he getting some founders stock in various compani that I had an involvement in.

Q Did that include Firefly?

A Yes, sir.

Q With respect to thenext paragraph of the letter, where reference is made to your projection of $900,000 or better for Delanair, do you have a recollection of what the discussion was that took place between you and Dr.Rolf in which you made such a projection?

A No, sir, I don't have a recollection.

Q There is a P.S. to that letter. You are projecting an equity position of $1,500,000 or better at the completion of this phase of the operation.

Do you have any recollection of the discussions between you and Dr.Rolf in which that projection was express

A Yes, sir.

Q Could you tell me what you said to him and what he said to you?

A Well, what I was trying to do was to try to appease Dr.Rolf, because he was upset at the decline in his portfolio. And I had made various projections regardin various stocks as to what might happen if these stocks attained certain earnings levels, where the stocks might be, and if that was the case, that there was a possibility that his portfolio -- that we are talking about an equity position of a million five.

Q Did you provide him any written projections of that calibre?

A Not to my recollection.

Q Did you show him any that you had made?

MR. TESSLER: It assumes facts not in evidence.

MR. KELLY: I asked him. Did he?

MR. TESSLER: There i no testimony that he made any.

MR. KELLY: That is a fair statement. I will withdraw the question, your Honor.

Q Were any of these projections put down in writin

A Not to my recollection.

Q So the only communications you had with Dr. Rolf regarding those were oral?

A I guess so.

Q Can you tell me the period of time in which discussions of the kind referred to in Exhibit K occurred between you and Dr. Rolf?

A Well, as I said, we had continuing discussions from the beginning part of 1970 throughthe letter of September 2, 1970, and subsequent to that up until this date on February 12, 1971. We had constant communications. In fact, I saw him several times in person.

THE COURT: Does that include discussions you had with Mr.Stott as well?

THE WITNESS: Yes, sir.

THE COURT: Who is John Gione

MR. KELLY: Cione, your Honor.

THE COURT: Cione. In Italy it would be Chione.

Who is that, Mr. Yamada?

A I have no idea who he is.

THE COURT: You sent a copy -- no, I am sorry -- Dr.Rolf apparently sent a copy to John Cione of Eastman Dillon Union Securities. You don't know who that is?

THE WITNESS: No, sir, I don't.

MR. KELLY: I can state, your Honor, that he is the head of the compliance department of Blyth Eastman Dillon and is in the courtroom.

THE COURT: Thank you.

MR. KELLY: Could I have read back, your Honor, your question?

THE COURT: Which one, sir?

MR. KELLY: The last one that you placed to the witness with respect to Mr.Stott.

(Record read.)

Q What do you mean by the statement "That includes discussions with Mr.Stott"?

A I had discussions with Mr.Stott through this period regarding Dr.Rolf. I asked Mr.Stott on a number of occasions to call Dr. Rolf on my behalf, to, I guess use the term, hold his hand, to appease him. We had discussions on several occasions regarding telephone calls that Mr.Stott received from Dr.Rolf, where Dr.Rolf expressed his dissatisfaction. That is in essence what I am talking about.

Q And that in essence is of the discussions that you had with Mr.Stott?

A Yes, sir.

Q How many times would you say that Mr.Stott was in your office?

A Several times.

Q Less than three? Three or less?

A My recollection is probably more.

Q Less than five?

A I wouldn't know. When we met, we met usually away from my office.

THE COURT: Where was your office at the time?

THE WITNESS: I had an office at 342 Madison AVenue, and I moved to East 73rd Street.

THE COURT: Office?

THE WITNESS: Yes, 23 East 73rd Street.

Q I would like to show you Exhibit N, not in evidence, and ask you if you recall receiving that letter. This letter is also subject to the stipulation of the pretrial order.

MR. SILVERMAN: Then there is no need to authenticate it. I didn't realize I had stipulated that.

If I did, that is fine.

MR. KELLY: I will offer it in evidence.

THE COURT: No objection.

Received. "N" as in not?

MR.KELLY: "N" as in not.

THE COURT: Received in evidence.

xxx (Defendants' Exhibit N was received in evidence.)

Q Do you recall that, Mr. Yamada?

A Yes.

THE COURT: No objection, Mr. Tessler?

MR. TESSLER: No.

MR. KELLY: No objection.

Q Do you recall the conversation that occurred between you and Dr. Rolf which he reports having recounted to Mrs.Rolf?

A Yes, sir, I recall this letter.

Q You recall what?

A I recall this letter.

Q Do you recall the conversation to which Dr. Rolf refers in this letter betweenyou and Dr.Rolf?

A Yes,sir.

Q Could you tell me, as respects that conversation what you said to him and what he said to you?

A Well, in essence he called, saying that Mrs. Rolf was extremely upset, and that it was affecting her mental --

Q I was asking what was the conversation between you and Dr.Rolf?

A That is what I am repeating.

Q I am sorry, go ahead.

A In essence, whatDr.Rolf said was that he had a discussion with his wife, and his wife was very upset, tha she was going to take things into her own hands if I didn't do something quickly; that they were discussing getting in touch with a legal firm in Cleveland regarding his account, and he felt that I had made, you know, substantial vague promises that weren't being kept, and that he expected me to do something quickly.

Q I asked you previously, Mr. Yamada, with respect to your meetings with Mr.Stott, from the period of your first meeting him up to May of 1969. Now I am going to askyou, from the period of May of 1969 until the termination of your activities as investment advisor for Dr.Rolf, as to whether or not in that period of time there were occasions of a social nature in which you met Mr.Stott. When I say "social," I don't mean lunch during a business day.

A There were very infrequent times when I did meet Mr.Stott.

Q On what you would call a social occasion?

A Yes, sir.

Q Can you recount to me where those took place and approximately how many times?

A As I said, they were not frequent. But I recall meeting him at his house; I recall he coming to my home. I recall meeting him for various sporting events, where in fact, you know, we might go to a basketball or hockey game, or something like that. But other than that, that would be about it.

Q And how frequently might that have occurred in this approximately --

A I believe it occurred very infrequently.

Q Do you recall testifying, Mr. Yamada, to a heated discussion with Mr.Stott on your direct examination?

A Yes, sir.

Q When did that discussion take place?

A Mr. Kelly, I recall the discussion vividly. As to the time, I am not sure I can place it. I would say that it would be toward the end of 1969.

Q Am I correct in recalling that he said, in words or in substance, that certain securities thenheld in the account that you had acquired were junk?

A Well, in substance, again what the conversation was, that Mr.Stott felt that he was entitled to more commission business not only from Rolf's account but from various accounts that I handled. He also felt that I was not doing what I was supposed to be doing regarding Rolf's account in terms of the quality, I guess, of certain investments.

I recall also that he had a very specific -- he had some notes regarding how much commission business I had given him and how much commission business the Rolf account had generated. And that his commissions, if my recollection serves me right, was less than 50 per cent, and that that was an area where he was upset.

Q You mean that the commissions that were earned by other brokerage firms in the Rolf account were equivalent to what he earned in the account?

A Yes.

Q With respect to the securities that you said he indicated lacked quality, can you tell me specifically what securities he made reference to?

A I can't recall the specific securities he made reference to. It was a relatively short, volatile conversation that we had.

THE COURT: Short what?

THE WITNESS: Volatile.

Q Did you promise him more commissions?

A Yes, sir.

Q In the Rolf account or elsewhere?

A I told him that I would give him as much commission business as I could in not only theRolf account but in other accounts that I managed.

Q And do you recall what transactions occurred in any account thereafter in furtherance of that commitment?

A I have no specific recolldction.

THE COURT: Why would there have been a discussion between you and Stott about receiving commissions from transactions other than those involving plaintiff, in other words from other accounts?

THE WITNESS: The idea was that Mr.Stott had, through his introduction, brought in several people as limited partners into one of my other investment partnerships And he was helpful in maintaining the Rolf account. And as a quid pro quo for doing this, I agreed to give him substantial commission business. He was doing it because he thought that my management, the assets that I had under management would continue to grow, and as they grew he would get a continuing benefit from it.

THE COURT: Were any of those people, people who had accounts at Eastman Dillon?

THE WITNESS: I don't know. Are you referrin to the people that Mr.Stott brought in?

THE COURT: Came into the limited partnership. Where the introduction was made to you to these people and then they subsequently came into the limited partnership.

THE WITNESS: My recollection is that one or two of the people -- one and possibly two of the people that he brought in did business with Mr.Stott.

THE COURT: In his representative capacity at Eastman Dillon?

THE WITNESS: Yes, sir.

Q Tell me the names of those people.

A I recall Joseph Picone, Mr.John Levy.

THE COURT: John Levy?

THE WITNESS: Yes, sir. And there was another gentleman named David Bolger.

Q With respect to --

A Excuse me. I do not have any knowledge one way or the other about what Mr. Bolger's activities were with Mr.Stott as far as his account at Eastman Dillon was concerned, or if he had one.

Q With respect to yourself,you had a series of control accounts or accounts over which you had authority that were engaged in substantial transactions in the purchase and sale of securities through this period 1969-1970. Isn't that a fair statement?

A Yes, sir.

Q And isn't it a fair statement to say that during that period of time you purchased and sold securities of many millions of dollars worth of value?

A Yes,sir.

Q And that with respect to such affiliations or partnerships or other organizations over which you had authority and control, that you were able to determine which brokerage firm should receive that brokerage business. Is that not correct?

A Could you repeat that sentence?

Q Should I rephrase it?

A Yes, I think you better. I am sort of confused.

Q What I am trying to say is that you were able, with respect to the transactions that you might have effected in the marketplace, the buy or sell, determine which brokerage firm you wanted to play that business with?

A Yes,sir, excepting for certain new issues.

Q In other words I amtalking, apart from new issues, where you were buying and selling stocks that had a public market.

A I would say the bulk of my assets were on that basis.

Q As a result of this discussion, did you open additional accounts for other affiliated organizations with Mr.Stott?

A I believe I did.

Q Following this conversation?

A Excuse me, following which conversation?

Q This conversation that you characterized as a heated discussion.

A I don't recall -- yes, i did.

Q Do you remember which accounts you opened up after this heated discussion?

A I believe I opened up an account for competitive associates later on.

Q Approximately how long after this heated discussion was that account opened?

A I couldn't say.

Q Would you say a month?

A I just have no recollection as to the time schedule.

Q Well, you wouldn't say it was six months?

A I don't know.

Q Have you no idea?

A If your question is whether that was the purpose for opening the account, that is not the case.

Q I think the purpose of my question is getting a better fix on when this conversation that you say took place occurred.

A I believe I stated earlier, some time in '69 or '70, and I think late '69 or early '70, and it would probably be some time closer to, I would guess, around spring of 1970.

Q Am I correct in recalling that in the period up to the end of 1969 that there was a complete liquidation of the holdings of Mr.Sterling?

A Correct.

Q And those liquidations occurred in Dr. Rolf's account at Eastman Dillon?

A Yes, sir.

Q Am I correct in understanding during that period of time by reason of those transactions, commissions were earned in the Rolf account by Mr.Stott?

A Yes, sir.

Q And isn't it a fact that after those liquidations that occurred through the period of 1969, that then you commenced to engage in transactions outside of Eastman Dillon and that the activity in the Eastman Dillon declined.

A Yes, sir.

Q Does that help you better to fix the time when this conversation took place?

A Yes, sir. Again I would say that it took place in the spring of 1970, would probably be a better fix timewise.

MR.KESSLER: Could we get the last part of that answer read back?

THE WITNESS: The spring of 1970.

Q That is somewhere in the neighborhood March to May of 1970?

A Mr. Kelly, you are asking me for a precise time, and as I stated earlier, I recall vividly this conversation. It did not take place in 1969; it took place some time in the early part of 1970. I don't recall the specific month. I just don't.

THE COURT: Before we move on, did Picone, Levy and Bolger become participants in your limited partnership?

A Those three did, yes, sir. But I state again I recall having conversations with Mr.Stott regarding an account that he may have handled for Levy and Picone at Eastman Dillon, but I have no recollection as to Bolger. I think Bolger was just a personal friend of Mr.Stott's.

THE COURT: I see.

Q What other accounts that were under your control did you arrange to go to Mr.Stott?

A I don't recall.

Q Is it your recollection that you gave in such accounts as you did have at EastmanDillon to Mr.Stott what you would consider substantial commission business?

A Not really.

Q Wouldn't you say the fact is that in the nature of your control of securities purchase and sales, it was, relatively speaking, very small?

A Yes, sir.

THE COURT: Would you be good enough to clarify that? I would like to get the full import of that question. Would you frame it again more fully.

MR. KELLY: Well, your Honor, I don't know that I can.

THE COURT: Read it back to me.

(Record read.)

Q I would like to direct your attention to a reference you made on direct to the fact that stocks were falling apart, and you said at that particular time Stott said something to you that he was fearful and that his superiors were upset.

Do you recall that testimony?

A Yes,sir.

Q Could you tell me when it was that that conversation took place?

A That took place in the early spring of 1970.

Q Did that conversation take place before or after the conversation that you have characterized as the heated discussion?

A I just don't know.

Q Who were the superiors, if you know, to whom Mr.Stott was referring?

A I do not --

MR. SILVERMAN: Objection.

MR. KELLY: I said if he knew.

THE COURT: Yes, I will allow it.

A I do not know.

Q What did he tell you was the complaint that was being made by the superiors?

A Well, that I was dealing in obscure stocks with small brokerage houses, not of Eastman Dillon stature.

Q Were the stocks to which you refer, these stocks acquired elsewhere than at Eastman Dillon?

A Yes, sir.

Q Do you know what the stocks were to which reference was being made?

A No, sir.

Q Did he tell you?

A I don't recall whether he did or did not.

THE COURT: Was that the first time that Mr. Stott had suggested to you that Eastman Dillon, that is, the superiors of Mr.Stott at Eastman Dillon, had expressed concern about such a matter?

THE WITNESS: To my recollection, yes, sir.

THE COURT: You say Mr. Stott told you their concern was that you were acquiring for Dr. Rolf what?

THE WITNESS: Eastman Dillon had a custodian accoount for Dr.Rolf of all the securities that were bought at other brokerage houses and were delivered to Eastman Dillon against payment. And so that the clerical and back office people at Eastman Dillon knew the various brokerage houses that I did business with, and Mr.Stott received confirmations directly from these brokerage houses. So I guess in essence one of the things that would concern people would be the fact --

THE COURT: I am mainly interested in what Mr.

Stott told you was the concern of his superiors.

THE WITNESS: The concern was regarding the quality of the stocks involved and the stability of the various small over-the-counter securities houses that I had chosen to deal with.

Q As to this conversation, to what --

A And --

Q Yes, sir?

THE COURT: What?

A And I was going to say also to the liquidity factor in the portfolio.

MR. TESSLER: Your Honor, I couldn't hear that.

THE WITNESS: The liquidity factor in the portfolio.

MR. TESSLER: Thank you.

Q Can you at this point, taking into account the conversations which we have just been discussing, when they took place in reference one to the other --

MR. TESSLER: Your Honor, I think that question has been asked a few minutes ago.

THE COURT: Yes, I think it was.

MR. KELLY: Could I please, your Honor, be permitted a little bit of leeway and try to fix the date of this conversation?

THE COURT: If he has any recollection about it I would be glad to hear it from him myself.

Do you have any recollection?

THE WITNESS: I just don't -- no, sir. No, your Honor.

Q Can you tell whether or not the two conversations took place within a few weeks of each other?

A I believe I said I just don't recall.

Q Would you say it took place within three months of each other?

A I have no recollection.

Q Did you say that in one of these conversations Mr. Yamada said he was going to write a letter -- Mr.Stott said he was going to write a letter?

THE COURT: Excuse me. On the question you have been asking, the witness' testimony was a few minutes ago that Mr.Stott some time in early spring of 1970 told the witness the stocks of plaintiff were falling apart and his superiors were getting suspicious, etc. And he has fixed the time of the heated discussion as being probably in the spring of 1970.

Q With respect to the conversation at which reference was made to the stocks falling apart, am I correct in recalling that you said that at that point Mr.Stott said he was going to write a letter?

A No, I don't believe I said that. I believe that reference to Mr.Stott writing a letter was the fact that Dr.Rolf had on several occasions contacted him; that there was some question as to the suitability of certain stocks inDr.Rolf's portfolio, and that Mr.Stott had heard from whoever his superiors may be, and he felt that he had to protect himself, and so that he was going to write a letter to that effect.

Q Write a letter to what effect?

A To the effect that all he was was an order taker. And I said, "Well, if that is what you have to do, go ahead."

Q Did you see that letter?

A I did not see it, no, sir.

Q The date of that letter would not help you in further identifying when this conversation took place?

A No, sir.

Q Am I correct in recalling that you said that on a few occasions that you directed Stott to acquire securities in the Rolf account where you were placing a buy order from a designated marketmaker?

A I recall saying to Mr.Stott on a couple of occasions relating to thinly traded over-the-counter securit that the best market would be in XYZ broker.

Q And that is what you meant in reference to having suggested to him, namely, where he could get the best market price?

A Where he could get the particular size.

Q That you might have wanted him to get?

A That's right. In other words, that marketmaker may have very well been heavy with the stock.

Q To your knowledge, in other words, that you had information that he didn't have?

A Right.

MR. KELLY: Your Honor, I am going to offer in evidence duly certified documents on file with this court, constituting an indictment in '72 Cr. 363 against Mr. Yamada and others, together with the plea therein in that case taken. An information in 73 Cr. 426; an information in 73 Cr. 427; a plea in 73 Cr. 426, and 73-427; an indictment in 74 Cr. 100; and a plea with respect to that indictment; and the judgment entered in 72 Cr. 363; 73 Cr. 426; 73 Cr. 427; 74 Cr. 100; another in 74 Cr. 100; and an indictment in 73 Cr. 520.

I would like to say with respect to that particu lar indictment that I do not know what happened respecting it, though I will inquire. What I am saying is that as respects all of the other indictments to which I refer, that Mr. Yamada pleaded guilty with respect to various of the counts as reflected in the documents which I am now offering.

THE COURT: What is the marking that is proposed

MR. KELLY: The marking, your Honor?

THE COURT: Yes. We will make it a comglomerate offer.

MR. KELLY: As one exhibit, your Honor.

Very well.

MR. SILVERMAN: May I ask if there are copies?

MR. KELLY: Yes.

xxx (Defendants' Exhibit VV was marked for identification.)

THE COURT: And Mr. Kelly you now offer them. Will you hand them to counsel?

MR. KELLY: Excuse me, your Honor?

THE COURT: You now offer them in evidence?

MR. KELLY: Yes, sir.

THE COURT: Any objection?

MR. TESSLER: Yes, your Honor. I make most strenous objection to this omnibus offer. I certainly don't have any objection to the entry of any plea made by Mr. Yamada as to any proceeding in this court, any transcript of any hearing held before this court, etc., and etc. But Mr. Yamada was indicted by the -- through the action of the Securities and Exchange Commission three separate times. There wee omnibus indictments charging all sorts of alleged violations of the securities laws of this country during a period involved in the handling of Dr. Rolf's account.

However, Mr. Yamada pleaded -- pleaded -- to the most minor, in one interpretation, parts of those indictments in satisfaction of the entire indictments.

THE COURT: Do I understand what you are saying is that you object to the receipt of this as presently offered, but you have no objection to receiving in evidence any plea entered by the witness.

MR. TESSLER: I would think that any plea entered by the witness in a proceeding in this court duly certified, as the rules provide, would be admissible. What I am objecting to is the offering of the indictments as being the truth of the facts stated.

THE COURT: Mr.Silverman, do you want to be heard on it?

MR. SILVERMAN: I have no objection to these exhibits, your Honor. I believe that you can even take judicial notice under the new rules of anything filed. So

I have no objection.

THE COURT: I am going to rule, and I do rule, that the pleas may be accepted and are accepted. And it will be received as VV in evidence; that is, the pleas and judgments of conviction if any.

xxx (Defendants' Exhibit VV was received in evidence.)

MR. KELLY: Your Honor, I don't see how the Court can determine from those what charges the pleas were taken to?

THE COURT: Mr. Kelly, if any one of those please which were taken fails to discuss the elements of the crimes charged which Mr. Yamada was pleading to, then the plea is unlawful. So I am to assume --

MR. KELLY: Then what, your Honor?

THE COURT: Unlawful, according to the rules of this Court; and the rules that govern plea taking. So I am to assume that whatever Judge took the plea, went meticulously through the various elements of the crimes charged before accepting any plea of guilty. So that will be --

MR. KELLY: I think there is truth to what you are saying in respect to these pleas. What your Honor is saying is certainly so. What happened here is exactly what your Honor indicated. I am not certain that in every instance it was that specific, but it may be, it may be, your Honor.

THE COURT: And in any event, the specific section and the specific charge, I am sure, was not only stated at the time of the taking of the plea, but was stated at the time of the imposition of sentence.

So that should suffice for the purpose which you have in mind.

They are received. The actual plea taking and the judgments of sentence and conviction, to the extent that they are offered, are received as VV in evidence.

Is there anything further?

MR. KELLY: Could I have, your Honor, a five-minute recess, because I think I am either concluded or close to it.

THE COURT: All right.

(Recess.)

MR. KELLY: Mr. Cione, will you stand up.

Mr. Yamada, this is Mr. Cione of Blyth Eastman Dillon. Do you recognize Mr. Cione as the person you met before?

THE WITNESS: I don't really recall.

Q You don't recall?

A No.

Q In the proceeding of the U.S. of America against Yamada, am I correct in understanding that that plea resulted from the fact thatyou had prepared false papers and false letters that were submitted to the Federal Distric Court in support of your plea for leniency?

A I believe that I -- I don't believe I prepared them. I believe I conspired to prepare them, and that it was not for leniency but for reduction of sentence.

Q What was it for?

A For reduction of sentence.

Q And when you say you conspired to prepare them, am I correct in understanding that you had those documents submitted to Judge Cooper, knowing that those documents were false?

MR. TESSLER: Objection,your Honor. I think the plea speaks for itself. I think the witness is certainly not qualified to discuss the legal ramifications of the precise charge. There was a plea, there was a full plea on record, there was a discussion on the record, a sentence on the record, and I think the record is the best evidence of this.

THE COURT: Overruled.

A That is what I pleaded to.

Q And is that in fact what happened?

A Absolutely. That is what I pleaded to.

Q I would like to show you an affidavit filed in this proceedings by Mr.Silverman, counsel for the plaintiff in this action, and call your attention to pages 7 to 9 of that affidavit, beginning with the language "Prior representations of defendant Yamada."

THE COURT: Would you mark it?

MR. KELLY: Yes, sir.

MR. SILVERMAN: May I ask that he also identify the affidavit by date so we know what he is referring to?

THE COURT: Let us mark it first.

xxx (Defendants' Exhibit Yy was marked for identification.)

MR. KELLY: June 29, 1976.

THE COURT: If you intend to show it to him -- if you ask him about these matters and he has no recall, Mr. Kelly, you can show it to him to see if it refreshes his recollection. But you can't undertake to impeach the witness' testimony by the alleged prior inconsistent statement of somebody else.

MR. KELLY: What I propose to do,your Honor, is to ask him to read those pages, and I am then going to ask him as to whether or not what is stated on those pages in fact is correct and did occur.

THE COURT: I don't care to proceed in that fashion, because the witness is here live, you see.

MR. KELLY: If you do not, your Honor, I will not.

THE COURT: Just ask him, if you want to block out anything from that or anything else and ask him the questions directly, that is perfectly satisfactory. But he is here as a live witness, and you can put it to him direct, whatever it is you seek to inquire about, but not in relation to its being in Mr.Silverman's affidavit as such.

Q On Saturday, June 20, in your presence, did Mr.Tessler talk with Mr.Silverman, telling Mr.Silverman that you, Mr. Yamada, were there in his, Mr.Tessler's office?

A My recollection is that on Saturday, June 20, I was not in Mr. Tessler's office.

THE COURT: In 1976?

October 1976?

THE WITNESS: Yes, sir.

Q On that date, am I correct in saying, therefore then, that Mr. Tessler did not request you to affirm anything by phone directly to Mr. Silverman?

THE COURT: One moment. I am informed we don't have a copy of that, but that is by-the-bye. I really don't see the relevance. Whatever is in there may be so or may not be so. It may be that whether it is true or not has some other kindof significance. But I don't see what its significance is to this witness testifying in this case about these issues, at least the questions that have been asked so far.

MR. EKLLY: Very well, your Honor.

Q Mr. Yamada, in the Microthermal trial you testified.

A Yes, sir.

Q Do you recall in that testimony that you said thatyou had committed perjury on several occasions in testifying before staff members of the Securities and Exchange Commission?

A Yes, sir.

MR. KELLY: No further questions, your Honor.

THE COURT: All right, Mr.Tessler.

MR. TESSLER: I will try and keep this short, your Honor.

THE WITNESS: Your Honor, may I have a word with my counsel for one minute before he cross-examines me?

THE COURT: Yes.

(Conference between witness and Mr.Tessler.)

CROSS-EXAMINATION

BY MR. TESSLER:

Q Mr. Yamada, in days when you were not in this testimony there was a lot of testimony about 15 stocks that a prior witness had rated as the lowest of the low. I am going to ask you a series of questions about those stocks, and as a predicate for all of those questions, I would ask you to answer them in relation to your knowledge of the plaintiff's investment objectives at the time you undertook to act as investment advisor to his account, as those objectives were related to you by Mr.Stott. Would you take that as a predicate for all of the next series of questions?

A Yes, sir.

Q With respect to your purchase of 1500 shares of Creative Polymer Products in October 1969, at the time of that purchase were you aware that there was a market manipulation of that stock?

A Not to my recollection, no.

Q And at the time that you made that purchase, was it your opinion that that was an appropriate investment for you to make in Dr.Rolf's account?

A I believe as a new issue that was okay.

Q It was your opinion that it was an appropriate investment?

A It was okay, yes.

Q At the time that you purchased for Dr.Rolf's account shares of Delanair, were you aware that there was a market manipulation of that stock?

A No, sir.

Q And at that time was it your opinion that the purchase of shares of Delanair for Dr.Rolf was an appropriat investment for that account?

A Yes, sir.

Q At the time you purchased 2000 shares of Funeral Homes of America for Dr.Rolf, were you aware that there was a market manipulation of that stock?

A No, sir.

Q And was it your opinion that at that time that was an appropriate investment for Dr.Rolf's account?

A No,sir.

Q It was not?

A I am sorry. Yes, sir, it was.

Q It was your opinion?

A Yes.

Q At the time you purchased 2500 shares of Synchronex, that was in October of '69, for a total purchase price of $32,218 for dr.Rolf, at that time, the initial purchase of Synchronex, were you aware that there was a market manipulation of that stock?

A I don't think so.

Q And was it your opinion that that was an appropriate investment for Dr.Rolf's account at that time? That is in October 1969.

A Well, it was a speculative investment, but I would guess that if you are talking specifically of that time period, I guess it would have been all right.

Q And at the time you purchased shares of -- withdrawn. At the time you purch-sed 1200 shares of Holobea were you aware that there was a market manipulation of that stock?

A No, sir.

Q And was it your opinion at the time of that purchase that that was an appropriate investment for Dr. Rolf's account, again keeping in mind what you had been told by Mr.Stott?

A Yes,sir.

Q At the time that you purchased 11,300 shares of Monarch Industries for Dr. Rolf, were you aware that there was a market manipulation of that stock?

A No,sir.

Q In fact, were you ever made aware that there was a market manipulation of that stock?

A I do not believe to this day that there was a market manipulation at all.

Q At the time that you made that purchase for Dr.Rolf's account, was it your opinion that that was an appropriate investment for that account?

A Yes,sir.

Q At the time you made the first purchase of 1200 shares of Visual Sciences, in November 1970, for a purchase price of $8400, at that time, sir, were you aware that there was a market manipulation of that stock?

A No,sir.

Q And at the time you made that first purchase, was it your opinion that that was an appropriate investment for Dr.Rolf's account?

A Yes,sir.

Q At the time that you made a purchase of a thousand shares of Tranquilaire Mental Health for Dr.Rolf's account, were you aware that there was a market manipulation of that stock?

A Not that I am aware.

Q And was it your opinion at that time that that was an appropriate investment for Dr.Rolf's account?

A Yes,sir.

Q At the time that you purchased shares of International Funeral for the doctor's account, were you aware of the market manipulation?

A No, sir.

Q And was it your opinion that that was an appropriate investment for Dr.Rolf's account?

A Yes, sir.

Q With respect to the status of Dr.Rolf's portfolio when you took over on or about April 30, 1969, were you aware that any of the stocks in that portfolio were being manipulated?

A No, sir.

Q And was it your investment judgment, based upon what you knew of the doctor's investment objectives, that it was an appropriate action to liquidate that portfolio?

A Not an overnight liquidation, but in due course, yes, sir.

Q As you did?

A Yes,sir.

Q With respect to the stocks purchased by you in the period between May 1969 and March 1971, other than the stocks I particularly named before and the stocks that you were asked about on your direct examination by Mr. Silverman, and by your cross-examination by Mr. Kelly -- and I am including listed stocks that you testified were recommended to you by Mr.Stott, by others, that you recommended, most of which were listed -- were you aware at the time you purchased any of those stocks that any of those stocks were the subject of a market manipulation?

A No,sir.

Q And at the time that you purchased or caused the account to purchase all of those other stocks and sell all of those other stocks, was it at those times your investment judgment that the purchase of those stocks was appropriate for Dr.Rolf's account?

A Well, on many of those shares, as I stated earlier in both, I believe, direct and cross, that there were certain shares that Mr.Stott specifically recommended, a I was guided by his recommendations as to the quality of the shares and its appropriateness in Dr.Rolf's portfolio.

Q With respect to those stocks and the guidance you have just testified to, did you make an investment decision that the purchase and sale of those shares was appropriate for Dr. Rolf?

A Yes, sir.

Q Uninfluenced in any way by any market manipulation that you knew of?

A No, sir.

Q That you participated in?

A No,sir.

Q Mr. Yamada, you testified at the beginning of your cross-examination by Mr. Kelly that in your examination of a lot of the stocks inDr.Rolf's portfolio in April 1969,you found that those stocks were aggressive. Do you recall that?

A Yes, sir.

Q And I believe you said that in your opinion they were not suitable for a widow's portfolio.

A Right.

Q Would you agree, Mr. Yamada, that whether a particular stock is suitable for a particular investor depends on many factors?

A Yes,sir.

Q Such as the age of the investor?

A Yes,sir.

Q His previous status in life?

A Yes,sir.

Q His expectation of future earnings or future income?

A Yes, sir.

Q And his investment objectives?

A Yes, sir.

Q As those are told you.

A Yes,sir.

Q So that would you agree, Mr. Yamada -- and we are going to confine the question solely to what has been described in this court as a passive outside investor, which I understand to mean someone who is not a marketmaker, an insider or a promoter -- would you agree that stocks suitable for a widow are not necessarily those stocks suitable for somebody, for instance, who is 26 years old and just gotten a good job with a lot of future earning potential

A There is very definitely a difference as to the appropriateness of a particular stock for a widow or other people. It depends on all factors that you have brought out.

Q And the stock that may be appropriate for somebody who is looking for substantial capital gains may be quite different than a stock appropriate for somebody who is looking for dividend income?

A That's correct.

Q Or for security for his coming retirement?

A Yes, sir.

Q Or for any number of factors?

A Yes, sir.

Q And would you also agree, Mr. Yamada, in determining what particular stocks are appropriate for each particular investor, that decision is largely dependent on what is said to be the investment objectives of such investor?

A Well, that and other conversations.

Q Mr. Yamada, in your experience in the investment community have you ever heard of an investor who did not have as at least a partial objective of his investment activity the preservat-on of his capital?

A Absolutely.

Q That there are investors who do not have at least --

A No, no, no. I am saying that all investors, as one important tenet, think in terms of preservation of capital.

Q As one part, one objective?

A Yes,sir.

Q In other words, you don't know of any investor who deliberately set out not to preserve his capital?

A No, sir, I do not.

Q Mr. Yamada, when you testified in the Microtherma trial, and you answered Mr. Kelly's questions and admitted that you gave perjurious testimony to the staff of the SEC, was that testimony to which you made reference given prior to or subsequent to the understanding that you would make a plea to the indictment in that case?

A It was prior to.

Q And with respect to testimony that you gave to the SEC, to the Department of Justice, in various courts both in this court and inother courts in this country, you testified on numerous occasions, is that correct?

A Yes,sir.

Q In all of that testimony did you ever give perjurious testimony?

A No, sir.

Q In all testimony given by you to those various bodies, various courts, after you reached your understanding with the Government with respect to your plea, is it your statement now that that testimony was true in all respects?

A Yes, sir.

MR.TESSLER: I have no further questions,your Honor.

(Pause.)

THE COURT: All right, Mr.Silverman. This will be redirect for you.

MR. SILVERMAN: Yes, it is. Thank you,your Honor

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Yamada, in the course of your cross-examination by Mr. Kelly, you were asked questions about Monarch Industries, and particularly in which house the stock of Monarch Industries was sold. And then there was some colloquy between counsel. I had suggested it was sold, that is, some was sold at Eastman Dillon. And then Mr. Kelly presented you with a monthly statement of a Philadelph firm called Woodcock, Cummings.

A Yes, sir.

Q And he asked you if that would help to refresh your recollection as to whether the Monarch Industries stock was sold through Woodcock, Cummings, and you said yes, it did, and indeed this stock, you say, was sold through there.

A Yes.

Q Do you recall that testimony?

A Yes, sir.

MR. KELLY: I object, your Honor, to that question. That does not state correctly that testimony or what I said. The testimony and questions were directed specifically to the 9600 shares that were to go into the Seljo Associates under an agreement that was there made, and the fact is that I was speaking as to those shares and where they were sold only with respect to those shares.

Q Mr. Yamada, do you recall whether there were any sales of Monarch Industries through Eastman Dillon during the period in which you were acting as Dr. Rolf's investment advisor?

A I know --

Q My question was whether you recall whether any Monarch Industries stock was sold through Eastman Dillon.

A My recollection is that Monarch Industries stock was sold, and unless I have some documents to refresh my recollection, I am not sure that I can answer that question.

Q Ishow you pages 48 and 49 of defendants' Exhibit Q in evidence, and I ask you, after looking at Exhibit Q, pages 48 and 49, whether your recollection is refreshed as to whether any securities -- whether Monarch Industries stock was sold through Eastman Dillon.

A Yes, sir.

MR. KELLY: Your Honor, could I ask that that document be offered. It is not in evidence. There isn't any quarrel as to it.

THE COURT: Q is not in evidence.

Are you putting it in?

MR. SILVERMAN: Yes, I am, your Honor, but I would want to make one very brief statement. Your Honor had said, I think it was the first day of trial, it would be helpful if the defendants could prepare an index of their exhibits in evidence. And I had thought that was your Honor's instructions. And I have kept on asking for that, because they have marked so many exhibits. And they pick them not in order. They keep putting them in one after the other. And it is difficult for me to know what is in. And I keep asking,may I have such an index and I am not --

THE COURT: As you know, it is easier for any attorney during the course of his own direct case to have an index prepared in advance, because he knows what he is going to do.

MR. SILVERMAN: No quarrel.

THE COURT: Whereas the cross-examination doesn' have that same advantage.

MR. SILVERMAN: But your Honor said to prepare that.

MR. KELLY: That is on the typewriter at the moment and the problem is exactly as your Honor indicated.

THE COURT: Why don't you offer that?

MR. SILVERMAN: I offer the entire exhibit, Exhibit Q, in evidence.

MR. KELLY: No objection.

THE COURT: No objection. Q in evidence is received.

xxx (Defendants' Exhibit Q was received in evidence.)

Q Is your recollection refreshed whether there were any sales of Monarch Industries stock through Eastman Dillon?

A Yes, sir.

Q And what is ycur present recollection?

A That there were 500 shares of Monarch Industries sold through Eastman Dillon on or about the 20th day of August, 1969.

Q Mr. Yamada, on cross-exmaination you were asked whether the stock of Tranquilaire was delivered free to Eastman Dillon. Do you know what the expression "delivered free to Eastman Dillon" means?

A Yes,sir. Eastman Dillon had a custodian account, as I stated earlier, for Dr.Rolf. And all securities that were purchased outside of Eastman Dillon were to be delivered to Eastman Dillon for payment on the settlement date. There were occasions whenDr.Rolf, like on a Reg. A. undertaking, where moneys had to be placed at a particular brokerage house to facilitate a closing,where that account, Dr.Rolf's account, would in fact pay for the securities at that particular brokerage house. And when it was so done, then the delivery, the physical delivery of the stock, was made to Eastman Dillon free or, in other words paid for.

Q In other words it would normally be delivery against payment to Eastman Dillon, is that correct?

A Yes.

MR. KELLY: I object to what was normal.

THE COURT: Sustained.

Q Do you recall whether the Tranquilaire stock was delivered free to Eastman Dillon?

A Based on exhibits shown to me by, I believe it was Mr. Kelly, that is probably the case.

MR. SILVERMAN: I ask that two papers, one haded to Carroll Partners, dated August 17, 1970, and the second a confirmation from Woodcock,Moyer, be combined as Plaintiff's Exhibit 20 for identification.

xxx (Plaintiff's Exhibit 20 was marked for identification.)

MR. KELLY: Could I see that, Mr.Silverman?

MR. SILVERMAN: Does your Honor want me to show it to him before I offer it into evidence, because I thought it was usual when I make the offer (handed to Mr. Kelly.)

Q Mr. Yamada, I show you what has been marked as Plaintiff's Exhibit 20 for identification, and I ask you if that is a facsimile of your signature that appears over the name Akiyoshi Yamada?

A Yes,I guess so.

Q Do you recall now giving instructions to Mr. Stott to pay Woodcock, Cummings $5000, and do you recall now for which stock that payment was made?

A Tranquilaire Mental Health Services.

MR. TESSLER: Your Honor, I would object to the form of those two questions, because they certainly contain an implication that the witness for some reason did not recall earlier. He was not shown the document.

MR. SILVERMAN: No implication was meant, Judge, believe me, none was meant.

THE COURT: Overruled.

MR. SILVERMAN: Certainly not. There are so many transactions, it would be impossible to remember them all.

I offer 20 in evidence.

MR. KELLY: No objection.

THE COURT: Received.

xxx (Plaintiff's Exhibit 20 was received in evidence.)

Q Mr. Kelly in cross-examination asked you whether GPI Industries was purchased on the initial public offering through a firm other than EastmanDillon, and you answered yes,it was. At a subsequent time was there apurchase of GPI Industries by Eastman Dillon?

A Yes,sir.

Q At the time that that subsequent purchase was made, did you discuss GPI with Mr.Stott?

A We had a brief discussion, yes,sir.

Q Mr. Kelly asked you in cross-examination about the purchase of the Delanair stock for Dr.Rolf's account, and he asked you in particular about a conversation that you had at or about the time you purchased the stock with Mr.Stott. In the course of answering that question, you referred to a subsequent conversation that you had had with Mr.Stott about Delanair, but did not give the substance of that subsequent conversation. Will you do so now, Mr. Yamada?

A Well,my recollection is that there was some question on the part of Mr.Stott as to the tying up of a significant portionof the portfolio in unregistered stock. And he wanted to know a little bit about Delanair, and I tried to inform him as to what the prospects were. And I told him that D.H. Blair was going to underwrite it.

Q Anything else that you can recall?

A I don't recall.

Q You mentioned in cross-examination today that Mr.Stott told you that he had had some complaints from his superior about what was happening in the Rolf account. Do you recall that testimony?

A Yes,sir.

Q Do you have any knowledge as to whether Mr. Stott or Eastman Dillon was subject to any investigation or examination by the Securities and ExchangeCommission concerning the Rolf account?

A Well --

MR. KELLY: I will object to this, your Honor. I don't know what relevancy it has to this proceeding or who that SEC proceeding was against. I don't suppose that it is going to be useful in this court to ascertain who the SEC was after and on what account and what happened. It strikes me that if we start on this, that is where we are going to end up.

THE COURT: Sustained.

MR. SILVERMAN: Your Honor, may I be heard for a moment?

It will go to the knowledge that Mr.Stott had of what was going on.

THE COURT: As of when?

MR. SILVERMAN: We are going to develop as of what date.

THE COURT: You tell me, as of approximately?

Q Do you know --

THE COURT: No, you tell me.

MR. SILVERMAN: Oh, I don't know.

THE COURT: I want a representation.

MR. SILVERMAN: I can't make that, your Honor. I don't know what the answer is going to be.

THE COURT: Sustained.

Q Did Mr.Stott ever tell you, Mr. Yamada, that he had been examined or his firm had been examined by the SEC?

THE COURT: Fix a time period, please. Before a certain date, at least, that relates to what we are about here.

Q In 1970 did Mr.Stott tell you that either he or his firm had been examined or questioned by the SEC?

A Mr.Silverman, in the latter part of 1970 there were extensive investigations. In fact, investigations I believe commenced in the summer of 1970 relating to activities of which I myself, partners, associates and various stocks that I was involved with. There were numbers of securities firms called under subpoena in that regard.

THE COURT: You are not answering the question--

THE WITNESS: I am trying --

THE COURT: -- that Mr.Silverman put to you, whic really is a very narrow question, and calls for I suppose a yes or no. Will you put that question again: Did Mr. Stott ever tell you at any time before the end of 1970 that he or his firm had been involved in any SEC inquiry?

THE WITNESS: I don't recall --

THE COURT: With respect to Dr.Rolf's account.

THE WITNESS: I can't put a specific -- I have problems with the time on this question.

THE COURT: Or for that matter I will extend the question to include May, end of May of 1971.

THE WITNESS: Yes,sir.

Q The answer is yes, he did tell you that his firm had been investigated?

A Right.

Q Or subject to examination by the SEC concerning the Rolf account, is that correct?

A Well, concerning activities relating to myself and the Rolf account.

Q Mr. Yamada, you testified on cross-examination about certain manipulated stocks, andyou said that when you had a manipulated situation you woud know or you could reasonably expect that the price of the stock would rise, did you not?

A Yes,sir.

Q And the reason the price of the stock would rise would be because members of the group would be trading the stock amongst themselves or between themselves, is that correct?

A That's right.

Q But there would always be a risk in such a situation which would exist until those parties who were part of the group were able to sell their stock, is that right?

A That's correct.

MR. KELLY: Objection,your Honor.

THE COURT: I will allow it.

Q And there would be risks, for example, if the Security and Exchange Commission suspended trading in a stock, is that right?

A That's correct.

Q Did that happen at Hair Extension?

A Yes,sir.

Q Would there also be different risks amongst members of the control group, depending upon when they bought their stock?

A Yes, sir.

Q So that those members who got in early, when the stock was low, would have at least on a quantity basis less risk than those who bought when the stock was high?

A That's correct.

Q And would there also be a difference in the degree of risk depending upon whether you were a principal or a tag-along account?

A That's correct.

MR. SILVERMAN: Thank you, Mr. Yamada.

MR.KELLY: Your Honor, could I move to strike that last question and answer. I have been educated in novelterms in this trial. Tag-along is a new one. I don't know what that means.

THE COURT: Perhaps you can substitute another expression for it. You mean free ride?

THE WITNESS: Yes,sir.

MR. SILVERMAN: No, I didn't.

THE COURT: He meant free ride.

MR. SILVERMAN: Then I am glad that --

MR. KELLY: I was entitled to my confusion, your Honor.

MR. SILVERMAN: I am glad there was an objection here.

THE COURT: I will overrule the objection at this point.

Q When a principal is part of a manipulation and owns stock in that company, he can determine for himself when he is going to sell the stock, is that right?

A If it is registered stock, yes.

Q And if there is an investment client of a principal who is in the stock, that investment client has to wait until the principal decides to sell him out, isn't that right?

A That's correct.

Q So that there is an additional risk for the investment client, isn't there, that the principal doesn't share?

A Well, there are times when the investment client gets out before the principal, even in a manipulation.

Q And there are times the other way around too, Mr. Yamada?

A That's right.

Q Isn't that correct?

A That's very correct, yes,sir.

Q And Hair Extension was one in which the principal got out first, right?

A Very definitely and there were clients that got stock.

MR. SILVERMAN: No further questions. Thank you.

RECROSS-EXAMINATION

BY MR. KELLY:

Q Did Mr.Stott tell you that he had been called before the SEC?

A No, he did not tell me he had been called before the SEC. I believe it was a discussion relating to -- I am not sure whether it was a subpoena or an inquiry regarding accounts, etc., or anything related to myself and a list of people.

Q Who was the target of the investigation --

MR. SILVERMAN: I object.

Q -- to which reference is being made.

THE COURT: I think the question will be satisfactory. Go ahead.

A Well, in answer to your question, Mr. Kelly, the SEC brought a civil action against, I believe, something in the neighborhood of 50 different people.

Q Including yourself?

A Including myself, yes, sir.

Q Did it include Eastman Dillon?

A No, sir.

Q And it was in connection with that civil proceeding that this investigation came into effect.

A I believe so, yes,sir.

MR. KELLY: No further questions, your Honor.

MR. TESSLER: I have no further questions.

THE COURT: Step down, Mr.Yamada.

(Witness excused.)

THE COURT: Call you next witness.

MR. SILVERMAN: The plaintiff rests, and that is subject to a witness stipulation that I am working out with Mr. Kelly, based upon what Miss Schall would testify if she were called, and then the reoffer of those schedules as corrected by her.

I believe that my associate, Mr. Harnes, is working on that today. We probably have it.

THE COURT: Subject to that?

MR. SILVERMAN: Subject to that, the plaintiff rests.

THE COURT: The plaintiff rests. Your motions, gentlemen?

Mr. Kelly?

MR. KELLY: No,sir.

THE COURT: Do you have a motion, Mr. Kelly?

MR. KELLY: No, sir.

THE COURT: Do you have a motion, Mr. Tessler?

MR. TESSLER: At the end of the plaintiff's case I move your Honor to dismiss for failure to make a prima facie case.

THE COURT: That motion is denied.

The case is with you, Mr. Kelly.

MR. LYON: Your Honor, Defendants Eastman Dillon Co., and Stott call as their first witness, Miss Cathy Haywood.

CATHERINE HAYWOOD, called as a witness by the defense, being first duly sworn, was examined and testified as follows:

THE COURT: You are Mr. Lyon or Mr.Siegel?

MR. LYON: Mr. Lyon.

DIRECT EXAMINATION

BY MR. LYON:

Q Miss Haywood, by whom are you employed?

A Blyth Eastman Dillon.

Q How long have you been employed by Blyth Eastman Dillon?

A Nine years.

Q Can you tell me in what capacity you are presentl employed?

A I am a secretary for New York retail.

Q Can you tell me, Miss Haywood, during the years 1968 and 1969, in what capacity were you then employed by Blyth Eastman Dillon?

A I was a secretary to Mr. S.Logan Sterling.

Q And who is Mr. Sterling?

A He was the partner in charge of the market advisory department.

Q I take it therefore that that was the department in which you therefore worked?

A Yes.

Q During that time and again directing your attention to the years 1968 and 1969, can you tell me what work you performed, if any, for Mr.Sterling?

A I performed secretarial duties, answering the phone, dictation, doing flashes.

Q What do you mean by "flashes"?

A Flashes are when he would have a meeting, I would type up his comments on the meeting and they would go over the wires.

Q Can I ask you whether flashes would also include at times written recommendations with respect to the securities even in the absence of a meeting having taken place?

A Yes. When he had an idea, they were written flashes that went over the wire to all our salesmen.

Q Miss Haywood, canyou describe generally the activities and the functions which Mr.Sterling, to your knowledge, performed at Blyth Eastman Dillon?

A Mr.Sterling was the partner in charge of market advisory service, which was a retail research end of the business, and he would travel and he would have Monday meetings. Commentaries he would write. In January he would write five stocks for the beginning of the year.

In June he would write five stocks for the middle part of the year, and then during, like, March and September, there were followups.

Q Can I ask you, can you tell me whether he also had clients for whom he acted as registered representative?

A Yes. He was also a registered representative. He did handle accounts.

Q Miss Haywood, would you tell me whether from time to time -- and I think you answered part of this question, but I would like to put it to you in this fashion, whether from time to time Mr.Sterling communicated in writing to the registered representatives employed by Eastman Dillon on his evaluations or his recommendations with respect to securities?

A Every Monday morning Mr.Sterling held a morning sales meeting, and he would talk over the pipes and give his comments on the market.

Q Were his recommendations communicated to the registered representatives of the firm in writing also?

A When he returned from the meeting, he would dictate it to me and I would type it up and it would go over the wires to all the salesmen.

Q Miss Haywood, can you tell me approximately how often you saw Mr. Sterling during the period 1968 and 1969?

A I saw Mr.Sterling every day, except when he was out of town.

Q And when did Mr.Sterling die?

MR. SILVERMAN: I object, your Honor.

THE COURT: I will take it.

MR. SILVERMAN: Shouldn't we have a death certificate?

THE COURT: Well, really, Mr. Silverman, is there any question that he died?

MR. SILVERMAN: None that he died, but there is a big question as to the date, and I am going to get to that, your Honor. That is why. I thought that we might have a death certificate to forestall that. But I will abide my peace until the time comes.

THE COURT: All right. You may answer.

A He died in August of 1969.

MR. SILVERMAN: Now, I move to strike that.

THE COURT: Did you attend the wake?

THE WITNESS: Yes, I did.

Q Miss Haywood, did there come a time during 1968 or 1969 when Mr.Sterling left his job at Eastman Dillon because of illness?

A The only time --

MR. SILVERMAN: I object. I don't think she is competent to testify whether he was ill or not.

Q Did there come a time during 1968 or 1969 when Mr.Sterling left his job at Eastman Dillon?

A Mr.Sterling left the office in mid-March of 1969.

Q Do you know anything about the circumstances in which he left?

MR. SILVERMAN: Your Honor, if he is going to get into Mr.Sterling's physical condition, he is getting in the back door what he couldn't get in the front door. She is not competent to testify to his illness.

THE COURT: He can do it in the back door perhaps

Did you ever visit him in the hospital?

THE WITNESS: No, I didn't visit him in the hospital.

THE COURT: Visit him at home?

THE WITNESS: No, I didn't.

THE COURT: You know what her answers are going to be and you know which answers are competent and which are not?

MR. LYON: Yes, your Honor.

THE COURT: I will sustain the objection to the question in its present form.

Q Miss Haywood, do you recall any incidents which occurred within a short time prior to Mr.Sterling's departure from the firm?

A In March of 1969 Mr. Sterling was away on a business trip. He returned from the business trip to conduct his Monday morning sales meeting, and during the sales meeting there were lapses of memory. And he apologized for this. He said, "I am sorry, I really don't know what is wrong with me." And he couldn't continue the meeting. He ended the meeting and came back to the office.

Q Do you remember anything about what transpired when he came back to the office?

A When he came back to the office that morning, he didn't dictate a memo. And he asked me to make a phone call. And when I went in to tell him that so and so was on the phone, he had no recollection of asking me to make the phone call or who the person was. And then all of a sudden he remembered and he talked to the person. And this continued throughout the week, where he would,you know, talk to you and then stop mid-sentence.

Q Do you have any knowledge as to when Mr.Sterling left the firm with reference, if it would help you,to the Monday to which you have testified?

A To the best of my recollection, it was either the following Friday or a week later he went to the doctor, and from the doctor he was put in the hospital, and never returned.

Q I takeit this would be the middle or latter part of March of 1969?

A Right.

THE COURT: Was he an older man?

THE WITNESS: Not really. I mean 65'ish.

Q Miss Haywood, I would like to show you two documents.

MR. LYON: I would first like to have marked as defendants exhibits for identification.

Q Miss Haywood, I show you two documents, one bearing a date of January 13, and the other February 26, your Honor.

THE COURT: Mr.Silverman.

CROSS-EXAMINATION

BY MR. SILVERMAN:

Q Were you Mr.Sterling's only secretary?

A No,I was not.

Q Were you his junior secretary?

A If you want to call me a junior secretary, yes.

Q In other words who was your immediate superior?

MR. TESSLER: Excuse me,your Honor, because of the setup of the courtroom, could you please ask the witness to keep her voice up.

THE COURT: Please speak louder.

THE WITNESS: Sorry.

Q Who was your immediate superior?

A I worked for Mr.Sterling and Duncan McLaughlin. Mr.Sterling had a personal secretary that handled his personal correspondence, which was Thomas Crozier.

Q Did you handle Mr. Sterling's correspondence with Dr.Rolf?

A Some of it, yes. Not only Dr. Rolf; there were other accounts too.

Q And Mr.Crozier handled some of it too, is that correct?

A That's right.

Q Did you ever speak with Dr.Rolf on the telephone?

A Yes, I did.

Q Did he call in October, November of 1968, do you know?

A Dr. Rolf called on a regular basis, maybe as many as five, six times a week. He called regularly to talk to Mr.Sterling.

Q During 1968, is that right?

A Yes.

Q Are you acquainted with John Cione, of Eastman Dillon?

A Yes, I am.

Q Are you sure that Mr.Sterling became ill in 1969 for the first time?

A Yes, I am.

Q I am going to read to you from Mr. Cione's deposition page 18, beginning line 19.

MR. KELLY: I will object to reading from a document not in evidence.

THE COURT: That isn't necessarily the problem just yet. What is your aim?

MR. SILVERMAN: There is a contradictory state-

Dr.Rolf, during the aforesaid period and all lists or other writings recommended made by Blyth Eastman during the year 1969 and 1970.

THE COURT: Mr. Kelly, let me interrupt you.

MR. KELLY: Yes, sir.

THE COURT: There is an outstanding order of reference to the magistrate with reference to all discovery matters. Take it up with the magistrate, please.

MR. KELLY: Yes,sir.

THE COURT: Call your next witness.

MR. KELLY: Mr.Stott.

MICHAEL A. STOTT, a defendant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. KELLY:

Q Mr.Stott,where do you now reside?

A I live in Ridgewood, New Jersey.

Q What is your present position with the firm of Eastman Dillon?

A I am vice-president of the firm of Blyth Eastman Dillon.

Q And what was your position with Eastman Dil in the years 1968, 1969?

A I was a registered representative.

THE COURT: Are you still, sir?

THE WITNESS: Yes, sir.

Q Did there come a time in 1969 when Dr.Rolf's account was assigned to you?

A Yes, sir.

Q Do you know when, approximately, that assignment occurred?

A That assignment occurred towards the end of April.

Q Of 1969?

A I am sorry, 1969.

Q Would you give me your educational background?

A St. Joseph's Grammar School in Paterson, New Jersey, Fordham Preparatory School in the Bronx, New York, and Villanova University in Villanova, Pennsylvania.

Q For how long did you attend Villanova?

A Two years,sir.

Q In what school of the University did you attend?

A The business school. It was called "Commerce andFinance."

Q Did you graduate?

A No, sir.

Q When did you leave Villanova?

A The spring of '57.

Q What then did you do?

A I then went down and interviewed with a few firms on Wall Street, and was interviewed by Blyth Eastman Dillon, and decided to go with Blyth -- well, it was then known as Eastman Dillon, Union Securities.

Q I think we have an understanding here, Mr. Stott, that where reference is made to the firmEastman Dillon or Blyth or Blyth Eastman Dillon, it is all that firm that continued through that period of time.

A Fine.

Q You took up employment with Eastman Dillon in 1967?

A Yes,sir.

Q Have you been with that firm or its successor firms ever since?

A Yes, sir.

Q What training course did you receive at Eastman Dillon?

A Well, I started with the firm some time in July, I forget the exact date, and I was immediately put on the firm training program and also registered with the New York Institute of Finance.

Q Would you tell me what courses were taken at the New York School -- the New York Institute of Finance?

A I took brokerage office procedure and security analysis 1 and 2. They ran in conjunction with the trainin program too.

Q With respect to the training program, will you explain briefly what the training program consisted of?

A Well, the training program consisted of going from department to department. In other words, over the period of eight months you would be assigned to let's say the margin department for two to three weeks, the P & S Department, purchase and sales department, for two or three weeks; the stock transfer department for, you know, two to three weeks; dividend department; over-the-counter trading department; unlisted stock trading department. The order room. Corporate finance. They constantly moved you about, and you worked generally with the head of that department.

Q What period of time did you attend the New York Institute of Finance?

A I believe it was from Augustthrough January or February of the next year, sir. Till February of '58.

Q Did you then take any New York StockExchange examination to qualify as a licensed registered representativ

A Yes, I did.

Q Did you pass them?

A Yes, I did.

Q In the period '69 to '70, in how many states were you licensed to act as a registered representative?

A I'd say about 15 or 10.

THE COURT: When had you first become a registered representative?

THE WITNESS: In April of 1958, your Honor.

Q 19 --

A 1958 is when I believe I first became registered.

Q Where and when in the firm did you actually commence working as an account executive. I will modify that. You said it was April of '58. Where did you commence actually working as an account executive?

A In our New York office, sir.

Q For how long did you act as a registered representative in the New York office?

A From April of '58 to the middle of 1962, sir.

Q State generally what activities and function you performed in that period of time.

A Well, I would work closely with the accounts of the firm, making them aware of their rsearch capabilities, doing portfolio reviews for them, making them aware of the research report, executing orders and purchases and sales for them to see that they were done in the proper manner; making sure the monthly statements were in the proper order, confirmations went out properly, and answering any request that they might have on any particular stock.

A person might call up and ask on a particular stock, and one that we don't follow, well, then, you would go to the Standard & Poors catalogs and send them the sheets that are in there that Standard & Poors publishes. Things of that nature.

THE COURT: Excuse me. With what firm -- what firm are you speaking about now?

THE WITNESS: I am with Blyth Eastman Dillon, always have been.

THE COURT: Let me go back a moment. You first became associated with Blyth Eastman in what year?

THE WITNESS: July, midddle of July, 1957, your Honor.

THE COURT: 1957?

THE WITNESS: '57, yes,sir.

THE COURT: I see. And you first became a registered representative in April of 1958?

THE WITNESS: Yes, sir. There has to be at least six months before you --

THE COURT: All right.

THE WITNESS: And you have to be at least 21 year of age.

MR. KELLY: All right,your Honor?

THE COURT: Yes.

Q By the same token did you with respect to customers that you handled make recommendations with respect to the securities in which they should invest?

A Yes,sir.

Q Can you estimate at the end of 1962 how many customers you might have been handling?

A I would say about 150, sir.

Q In 1962, did you assume additional responsibilit

A Yes, I did.

Q What were they?

A I was made the manager of our Paterson, New Jersey office.

Q For what period were you the branch manager in Paterson?

A Would it be all right -- I made a note of that, but I believe it was April, May of 1962 through somewhere 1965. I don't know the exact dates, from when to when.

Q Is it your best recollection that it is some time in 1965 that you ceased at Paterson?

A To the best of my recollection, yes,sir.

MR. TESSLER: Excuse me, Mr. Kelly.

Your Honor, I apologize for having to rise again, it is extremely difficult because I can't see the witness from here.

THE COURT: Do youw ant to sit in the jury box? Would that help?

MR. TESSLER: No. If the witness can keep his voice up.

THE COURT: Can you speak a little louder?

THE WITNESS: I am sorry.

Q Am I correct in understanding at this point that it was in the period approximately 1962 to 1965 that you acted as the branch manager in Paterson?

A Yes, sir.

Q Will you state generally what activities and functions you performed as a branch manager in the Paterson office?

A Well, the Paterson office -- as the branch manager of the Paterson office, my duties were quite a few. It was the supervising of the registered representatives that were in the office.

Q How many registered representatives were in the office?

A Four.

Q When you started.

A Yes, sir.

Q How many were there when you left Paterson?

A Nine to ten, sir.

Q What else did you do outside of supervising?

A Well, I would supervise their activities, I would check with our order room to see that orders were being entered properly and being executed properly. I would check every monthly statement in the office, supervise the two -- there was a smaller office when I first went there. Supervise the three clerks that were there. Hold sales meetings with the registered representatives to make them aware of all the research that Eastman Dillon had, and generally work with them on a very close --

Q How many customers would you approximate were serviced by the Paterson office during the period of time that you were there?

A I would have to say around 2000, sir. 1500 to 2000.

Q Did you then become branch --

THE COURT: Accounts?

THE WITNESS: Accounts, yes, sir.

Q Did you then become branch manager in Newark?

A Yes, I did, sir.

Q How many registered representatives were there in the Newark office?

A There was about 18 when I arrived and approximat 23 when I left.

Q And how many customers would you say were serviced out of the Newark office?

A I would have to say seven to 8000.

Q For how long did you remain branch manager in Newark?

A Approximately, until the fall of 1967.

Q Were your duties in newark as branch manager any different than those in Paterson?

A Oh,yes, they were quite a bit different, Newark was -- one of our larger offices. I had an assistant manager, I had a mutual fund manager, I had a back office manager, and we had a small trading operation. There was a manager of that. And they traded just only New Jersey bank stocks.

Q When you say "traded," will you explain what that --

A Made a market --

Q -- tell me just what that means.

A Making a market in the bank stocks. It means that we would buy or sell from other dealers or from clients of the firm, we would make a market in any of the some fifty bank stocks.

Q In other words, you would in the professional marketplace be ready to buy or to sell the stocks that you were making a market in, at a quotation that you gave?

A That's correct.

Q And you would say that this was the trading function in the Newark office was confined to New Jersey bank stocks.

A Strictly New Jersey bank stocks.

Q And the basic trading that was done by Eastman Dillon was done where?

A Was done in the Newark office, and who was in constant conversation with our New York trading desk.

Q What Iam saying is: With respect to the purchase and sale of securities and the making of market other than in New Jersey bank stocks, where was that function performed in Eastman Dillon?

A Other than New Jersey bankstocks?

Q Yes.

A The orders were executed in New York.

Q Out of the New York trading desk?

A Yes, sir.

Q Where did you go from Newark?

A In the fall of 1957, I went back into the New York office.

Q And performed thereafter what function?

A As a registered representative.

Q When first did you meet Mr. Yamada?

A I believe around January of 1969.

Q Prior to May of 1969, when he became the investment advisor for Dr.Rolf, how many times would you estimate you had seen him?

A About three times.

Q Had you met him socially up to that time?

A No,sir.

Q As of the end of April 1969, what did you know about Mr. Yamada?

A As of the end of April, towards the end of April 1969?

Q Yes.

A Well, I knew Mr. Yamada was with the firm of Kuhn, Loeb; I knew he was starting a hedge fund or a mutual fund, I knew of Mr. Yamada's educational background at Harvard Business School. I knew of Mr. Yamada's family in Japan. I knew his dad was the, I believe, president or chairman of the board of a firm called Yamada Iron & Steel, which was a very large steel company in Japan.

I also knew that some of the investors -- I was told, I should say, that some of the investors in Mr. Yamada's mutual fund were men of -- well-known individuals with a very fine character. I was told that Mr. Keith Funston, who was the president of the New York StockExchange and a Mr. Marusi, I believe, who was the president of Bordens Milk at the time -- I think he is the chairman now; a Mr. Dilworth, who was an advisor to the Rockefeller family, and a Mr.Byrne, who was either the president or the chairman of Cities Service, were investing money with Mr. Yamada.

I also sat on the board of a club with a Mr. Charles Ely, who was the partner in charge of research at Kuhn, Loeb at the time, and he had nothing but wonderful things to say about Mr. Yamada, and, as a matter of fact, even said that they were very sorry to lose him from the firm.

Q Tell me, up to the present time, from the time that Dr.Rolf had Mr. Yamada as his investment advisor -- in other words, from approximately the beginning of May 1969 up to this time -- how many social meetings have you had with Mr. Yamada? And when I say social meetings, I exclude business luncheons at which only businessmen might be present.

A I believe two times.

Q Can you tell me the occasions?

A Yes, I can remember the one occasion -- I can remember both occasions. Once was around Christmas of 1969 in a restaurant uptown, for lunch, where my wife, Mr. Stott, and Mr.and Mrs. Yamada and I had lunch.

And I remember it because they were singing Christmas carols in this particular restaurant. And then we received invitation to Mr. Yamada's apartment for a New Year's Eve party, the New Year's eve of July -- of December 31, '69, and January 1, 1970, which Mr.Stott and I always stay home with the children. But we drove in for an hour to the party, and I believe we were back home around 11:30 or so.

Q How many others were there?

A Oh, 60, 70 people.

Q Did you go with Mr. Yamada to any sporting activities?

A No, I didn't.

Q When did you first meet Dr. Rolf?

A The first time I met Dr. Rolf was in October some time of 1970.

Q When did you first talk by telephone with Dr. Rolf?

A Towards the end of April 1969.

Q At that time did you tell Dr. Rolf that Mr. Sterling had died?

A No, sir. Mr. Sterling died in August of that year.

THE COURT: Just a moment, please.

(Pause.)

Q Did you overhear the statements of Mr.Sterling on the occasion to which your secretary testified just before you got on the stand?

A Yes, I did.

MR. SILVERMAN: I object.

THE COURT: Sustained.

MR. KELLY: I would like, your Honor, to offer as proof that this witness overheard that discussion and observed and heard the same events that have been related by the previous witness. I intend to do the same thing with Mr.Cione; and to askwhether or not they too observed the same condition. If there is no question as to the correctness of that testimony, then I would not.

THE COURT: Let me hear from the witness.

MR. KELLY: I am sorry, your Honor?

THE COURT: Let me hear from the witness, from his own mouth and from his own recollection; not based on whether he heard some other witness testify.

MR. KELLY: I didn't mean to use that -- I was just trying to relate to the witness the thing happened.

THE COURT: All right, fine.

Go ahead.

Q With respect to that particular event, will you tell me where you were and how you heard this lecture of Mr.Sterling?

THE COURT: I think we will have to get --

Objection sustained. Mr. Silverman is standing.

Sustained. You will have to lay a little strong foundation than that.

Q Were you physically present where Mr. Sterling was when he spoke?

THE COURT: Where and when, who spoke, to whom, where were you. Foundation, please.

Q Did you witness a discussion conducted by Mr. Mterling at which discussion he became incoherent or confused?

A I think the --

MR. SILVERMAN: I object, your Honor. He

doesn't say when, what time, What your Honor said, what time?

MR. KELLY: First let us find out if it happened and then I will.

MR. SILVERMAN: It may have been more than once.

THE COURT: Sequence is all right, Mr. Kelly.

Do you recall such an event?

THE WITNESS: Yes. I was not --

THE COURT: The answer is yes or no.

THE WITNESS: Oh, yes.

THE COURT: Fix the time, please.

Q When did that occur?

A Some time in March. What are you talking about now, Mr. Kelly? I am confused.

Q This occasion in which Mr.Sterling became confused or said he didn't remember.

A I believe it was some time in March.

THE COURT: March?

THE WITNESS: March of 1969.

Q When he was speaking, where were you?

A Well, I think I had better describe. Throughout the firm, when Mr.Sterling spoke or when anybody from the research department speaks, or for that matter when anybody wants to notify everybody in the firm, they pick up a firm, and we have an open wire system through all our offices,and it is a loud speaker, and they are in each office and board rooms and everything else. I was listenin to Mr.Sterling's conversation.

Q Did anything occur that was not normal?

MR. SILVERMAN: I object again, your Honor. "Did anything occur that was not normal?"

THE COURT: Well, I think Mr. Kelly is trying not to lead him.

MR. KELLY: Yes, sir.

THE COURT: I will allow him and give him what preceded.

Go ahead.

A Yes, Mr.Sterling started to speak, and in the middle of his talk to the organization, he kind of stopped and faded in and out,and cut it short, and in other words the talk, there was no continuity to it, but halfway through, he just almost stopped and that was it.

Q You said that you talked first by telephone with Dr.Rolf in the latter part of April of 1969, is that right?

A Yes.

Q Will you tell me the substance of that conversation?

A I called Dr. Rolf some time in the latter part of April 1969, to tell him that the firm had assigned his account to me, and that Mr.Sterling was ill, and I gave him a little background on myself -- I guess you would call it a thumbnail sketch of who I was, and what my experience was in the business -- and said that I would like to be of service to him and handle the account.

Q What did he say to you?

A Then Dr.Rolf said to me, "Well" -- he said basically "that I think I would rather get an advisor," and that he didn't want me to handle the account, and that he asked me at that time did I know anybody, you know, any advisors. I said I'd have to think about that, and I said I would call him back.

Q Was that the sum and substance of what occurred?

A That was basically it. He inquired about Mr. Sterling as to, you know, was he feeling any better and all that sort of stuff.

Q Subsequent to that call, did you call Dr. Rolf back?

A Yes, about one or two days later I called him back.

Q Tell me what you told him, what he said to you.

A I called Dr.Rolf back and I told the doctor, in answer to his question that he asked me did I know any advisors, I said there were two that I really knew, you know, had an acquaintance with, and one was a Mr. Donald Geddes, from Inverness Management, and I gave him a little background on Mr.Geddes as to -- I told him that Mr.Geddes had a firm called Darcy Pierce, and later became Inverness Management, I told him was a rather large investment firm, investment advisory firm, and that they also had a fund -- I believe it was that they advised. And then I also mentioned to him about Mr. Yamada.

Q Tell me what you said about Mr. Yamada.

A Itold him that Mr. Yamada -- I told him again, as I stated before, what I knew about Mr. Yamada. I told him that Mr. Yamada was from a very fine family in Japan, that his dad was the president or chairman of Yamada Iron & Steel, I told him of my conversations with Mr. Ely of Kuhn, Loeb, who was a director of research. I told him that Mr. Yamada was forming a mutual fund or hedge fund, and I told him of -- that he had some substantial investors.

I told him that one was the president of the New York Stock Exchange. I told him another was the president and chairman of Bordens Milk, and a third was an advisor to the Rockefeller families and the fourth was former president or chairman of Cities Service.

Q Was that the sum and substance of that conversation?

A I think I mentioned his educational background and that he was an analyst at Kuhn, Loeb.

Q Was that what happened in that conversation?

A Yes,sir.

Q Did Dr.Rolf say anything?

A No. He thanked me. I gave him both these fellows' phone numbers, and then Dr.Rolf said that he would probably call them, he was coming east to see three advisors in Boston, and that he would call these fellows, probably call these fellows also. And he just thanked me for giving him the names.

Q When next did you hear from Dr.Rolf?

A I guess it was right at the end of April of 1969

Q What was said in that conversation?

A Dr.Rolf told me that he had talked to, you know, different people, and that he selected Mr. Yamada to be his investment advisor.

Q I show you, Mr.Stott, Plaintiff's Exhibit 3 in evidence, and I ask you, are you familiar with that communication?

A Yes, sir.

Q Bearing in mind the date of that communication, September of 1970, I ask you: Prior to September 1970, didDr. Rolf ever express to you any dissatisfaction with Mr. Yamada or dissatisfaction respecting any transactions effected in the Bedco account?

A Yes, he did.

Q When?

A Some time in April of 1970 -- some time in April of 1970.

Q As a result of that conversation that you had with Dr. Rolf in April 1970, did you write Dr.Rolf a letter?

A Yes, i did.

Q I show you Defendants' Exhibit E in evidence, and I ask you if that is that letter.

A Yes. That is the letter I sent, yes, sir.

Q In this telephone conversation that you had with Dr.Rolf prior to the transaction of this letter that you wrote, what did you say to him and what did hesay to you?

A Well, Dr.Rolf called, and he said to me, "Just thought you might be interested that he had done some sort of a computation on his portfolio that was being handled by Mr. Yamada, and he said that according to his figures there were some $5 million in face value -- face value of the securities -- in transactions during the past 12 months or so, past year. And I said,"Well, that is quite a figure," and I told him that he should call Mr. Yamada on this. And I told him that there was absolutely nothing I could do about it. You know, he had signed over power of attorney and also signed our form giving him the power to make all decisions and to give all orders in Dr.Rolf's account, including the withdrawal of money. And I told him he should call Mr. Yamada and possibly sit down with him or at least get in touch with him. I decided to follow it up with a letter also.

Q What did Dr.Rolf say?

A He said he would call Mr. Yamada.

Q Was that the sum and substance of the conversation that occurred?

A That was basically it, sir.

Q Following this conversation, did you receive a letter dated April 15 in evidence as Trial Exhibit 1, which I will show you.

A What was the question, sir? You asked if I received this letter?

Q Did you receive this letter?

A Yes, I did.

Q After the letter that you had sent?

A Yes, I did.

MR. TESSLER: Excuse me, Mr. Kelly.

Your Honor, I would point out that according to my notes, that letter was admitted into evidence but it was not received as proof of what Mr. Yamada was supposed to have said to Dr. Rolf. And when Mr. Yamada was on the stand he was not asked about that letter. I just make that observation for the Court's information.

Q In the period prior to October 1970, when you first met Dr.Rolf directly, face to face, can you state the frequency of your conversations by phone with Dr.Rolf?

A Well, from the time that Dr. Rolf signed the forms that were required by Eastman Dillon to give Mr. Yamada a power of attorney until some time in the early fall, I would say I talked to him maybe a totle of seven times, and two or three of those times were in August when I called Dr.Rolf. He and Mr.Sterling were quite friendly, I guess. And I called him to inform him of Mr.Sterling's death, and then he called me back, one time, to get information as to where the funeral services were going to be, and if there was a wake.

Q Can you give me an estimate in the period from

May of 1969 to October of 1970 how many times a month you might have talked with him?

THE COURT: With Dr.Rolf.

Q With Dr.Rolf.

A With Dr.Rolf? Well, the first two months wasn' much at all. And then I would say at the end of August, through October, it was probably maybe four or five times a month, six times a month.

MR. TESSLER: Your Honor, may I have a clarification? I believe I heard Mr. Kelly say October 1970. Was that the correct date you had in mind?

MR. KELLY: Yes.

THE COURT: That is the date he used.

He said from May '69 until October of 1970. That was your question.

MR. KELLY: Yes, sir.

A Well, I would say for July and August, other than the conversations about Mr.Sterling's death, two or three times, I would say maybe six, seven times a month up until I received this letter from,you know, the phone call from Dr.Rolf. Six or seven times, yes.

Q You aresaying up to the time of this letter.

A Yes.

Q You refer to the letter marked as Exhibit 1?

A Right.

Q After the receipt of that letter, Exhibit 1, what was the frequency of your communications?

A Well, either my secretary or myself would call him once a day.

Q To do what?

A Well, he asked in the letter that, it says "Have your secretary get a daily quote on my OTC securities. Notify me promptly if there is any sigifnicant change up or down, and keep me informed regarding any information you consider pertinent. In this way I won't have to call Cleveland brokers or annoy you."

Well, I did not want to be a judge of what he considered a change up or down, so we, either my secretary or myself, would call him every day.

MR. TESSLER: I ask that the first part of that answer be stricken, your Honor.

THE COURT: Strike the first part.

MR. KELLY: What part was stricken, your Honor?

THE COURT: "I did not want to be a judge of what was" --

Q And the securities on which quotations were given were the over-the-counter securities?

A Yes.

Q In this same period of time, again from the commencement of the activities of Mr. Yamada, until the day in October when you first face to face met with Dr. Rolf, can you state the frequency of your communications personally or by phone with Mr. Yamada?

A From what period, sir?

Q From the period in May of 1969 when Mr. Yamada became Dr.Rolf's investment advisor until that day in October when you first personally met Dr.Rolf in 1970.

A How many times did I talk with --

Q With Mr. Yamada in that period of time,you can estimate it by day, by week or by month.

A Well, I would call Mr. Yamada every morning, and when he would put out a list for all institutional clients.

Q What is an institutional client?

A An institutional client would be a professional money manager, a bank, an investment trust, things of that order, insurance companies, things of that order.

Q What is the other kind of customer?

A Well, you just call them a retail client.

Q Go ahead.

A I would call Mr. Yamada to give him the institutional buy-sell list. The institutional buy-sell list is securities that Eastman Dillon has buy orders in, you know, in large numbers of shares, and orders in which Eastman Dillon has sell orders in. The idea of a list like that is to try and put a buyer and a seller together.

MR. TESSLER: Objection, your Honor.

THE COURT: Not responsive?

MR. TESSLER: Yes.

THE COURT: Well, it is, but I will allow it. Probably going to bring it out anyhow.

So that the answer, then, is that from May of '69 until October of '70 you call Mr. Yamada daily.

THE WITNESS: I would call him daily and I would hear from Mr. Yamada --

THE COURT: The answer is, you called him daily.

Q In those phone conversations what else transpired other than your giving him the material that you have just described?

A Well, I would make Mr. Yamada aware of any research recommendations that Eastman Dillon was putting out or any of Mr.Sterling's flashes or make him aware of what was said at any -- I didn't mean Mr.Sterling's flashes make him aware of Mr.Sterling's successor, I forget who that was, make him aware of any research meetings that I attended within the firm to tell him what was said in those meetings. Generally do what you do for all institutional clients, make them aware of anything that the firm is recommending or doing.

Q You dealt with Mr. Yamada as an institutional, not a retail client?

MR. TESSLER: Objection, your Honor. That calls for a conclusion of the witness. That is a matter to be decided by the trier of fact, the way Mr. Stott dealt with Mr. Yamada.

THE COURT: Sustained.

Q In that period of time what knowledge did you have with respect to the identity or nature of the clients of Mr. Yamada?

A Could you say that again, Mr. Kelly?

Q In this period of time when you were speaking with Mr.Yamada, what knowledge did you have with respect to clients of Mr. Yamada, for whom he was acting or who he was serving?

MR. SILVERMAN: I object unless it is limited to personal knowledge, not hearsay. He didn't do that in his question.

MR. KELLY: I am perfectly willing to elicit wha he knew, however he knew it, your Honor, whether it was direct or hearsay or otherwise. I want to know what this witness --

THE COURT: I will accept it, but not for the truth of what it is asserted, but rather reflecting the witness' understanding or state of mind at the time. You may answer.

THE WITNESS: I am sorry, could that question be repeated there?

(Question read.)

A Well, some of Mr. Yamada's clients I would classify as institution clients, and some of Mr. Yamada's clients --

THE COURT: I think that is not the question.

THE WITNESS: Maybe I am missing it. I am sorry.

THE COURT: Why don't you put it again, Mr. Kelly?

THE WITNESS: I am sorry.

Q In this period of time what did you know with respect to the identity or character of the clients that Mr. Yamada was serving, or the organizations with whom he was acting?

A During that period, sir?

Q Let us say in the period through 1969. From the time you met him in January of 1969 until the end of

1969.

A I knew Mr. Yamada was handling Dr.Rolf's account, advising Dr.Rolf.

Q Right.

A I knew Mr. Yamada had a hedge fund called Takara Partners. I knew Mr. Yamada was advising a Mr. Merusi. I don't know if it was that period of time that Mr. Yamada was advising a competitive fund called Mutual Associates.

MR. SILVERMAN: I move to strike the answer if he doesn't know.

THE COURT: Strike it.

Q What else?

A I think those are it.

Q Did you have any knowledge of the amount of money that was being managed by Mr. Yamada?

A No, I did not. You mean the total?

Q Approximately how much he was managing. Did you have any idea with respect to that?

MR. SILVERMAN: I object. The witness said he doesn't know, and now we are getting into the area of speculation.

THE COURT: You don't know, sir?

THE WITNESS: I don't know the exact amount, no, sir.

Q Did you have any impression yourself of the approximate amount?

MR. SILVERMAN: I object. He can't get that information that way,your Honor. Either he knows or he doesn't.

THE COURT: I will take it as reflecting only his state of mind.

THE WITNESS: Well, I knew that he was managing Dr.Rolf's money, and I knew of Takara and --

THE COURT: You didn't ask him particulars. You asked him for a general answer, did you not?

MR. KELLY: Yes.

A My general feeling was it was probably around seven or$8 million. That was my general --

Q And when you provided the information to Mr. Yamada, which you said in this period of time you provided him with, did you provide him with information that you felt was directed only to Dr.Rolf or to any of the customers and clients of Mr. Yamada?

MR. TESSLER: Objection, your Honor.

THE COURT: Sustained.

Q Did you discuss with Mr. Yamada in this period of time investment recommendations that you were asking he make for Takara Partners?

A Yes.

Q For this hedge fund that Mr. Yamada was managing

A Yes.

Q Did you provide him with information with respect to investment material that you felt would be useful with respect to any individual client that Mr. Yamada might be serving?

A No.

MR. TESSLER: Objection.

MR. SILVERMAN: I object.

THE COURT: Just a moment.

Sustained.

Q Did you in any of these conversations recommend to Mr. Yamada that he purchase for Dr.Rolf's account any of the following securities: Creative Polymer Products?

A No.

Q Delanair?

A No.

Q Funeral Homes of America?

A No.

Q Synchronex Corporation?

A No.

Q M.H.Studios?

A No.

Q Holobeam, Inc.?

A No.

Q Health Evaluation?

A No.

Q Hair Extension Centers?

A No.

Q GPI?

A No.

Q Monarch Industries?

A No.

Q Visual Sciences?

A No.

Q International Health Services?

A No.

Q Tranquilaire Mental Health?

A No.

Q International Funeral Services?

A No.

Q Firefly Neterprises?

A No.

Q Did you recommend to Dr.Rolf directly that he purchase any of those securities that I have just mentioned?

A No.

Q In the period May 1969 to March of 1971, did you ever purchase for any customer of the firm, excluding Dr.Rolf, any of the 15 securities I have just named?

A No, I never did, except on three occasions.

Q Will you give me the exceptions.

A I have a note in my pocket. Is that all right to look at?

Q Yes.

MR. SILVERMAN: If the witness is going to read from a note, your Honor, I would like to have it marked for identification.

MR. KELLY: I have no objection to that, your Honor.

THE COURT: Mark it.

You have no recollection independently of the note, is that correct?

THE WITNESS: No. I knew of three occasions, your Honor -- three particular securities, but I did not know the amounts or who the client was.

THE COURT: You have no recollection without the use of the note, is that correct?

THE WITNESS: That is correct.

MR. TESSLER: Your Honor, may counsel see that document?

THE COURT: Once it is marked.

xxx (Defendants' Exhibit DDD was marked for identification.)

Q Have you my question in mind, Mr.Stott?

A You asked me if I ever purchased any of the securities which you mentioned for any accounts of the firm. My answer was no, except for three -- except on three occasions.

Q Tell me, with respect to those, what was the security, what was the number of shares, and who was orderin those?

A Well,50 shares of Holobeam purchased by an investment advisor -- purchased for an investment advisor on his instructions for one of his accounts.

MR. TESSLER: Your Honor, I would object to that answer as not responsive and also as containing a conclusion of the witness. I think what was asked for was the account name, number of shares, and the particular --

MR. KELLY: And as to who ordered it?

MR. TESSLER: Pardon me?

MR. KELLY: As to who ordered it. That is a simple fact.

MR. TESSLER: What I am objecting to, Mr. Kelly, is the witness' statement that it was purchased throu an investment advisor's instructions. I don't think we have any proof of that.

MR. KELLY: That is what I am putting in now.

MR. TESSLER: You are putting in conclusions.

THE COURT: Why don't you seek to elicit the particulars of his own knowledge in this regard, Mr. Kelly?

Q Was an exception Holobeam?

A Yes.

Q How many shares?

A 50 shares.

Q Who placed the order with you to purchase 50 shares of Holobeam?

A A Mr.Donald Geddes.

Q And who was Donald Geddes?

A He was an investment advisor and an officer of Inverness Management.

Q Was another exception Synchronex?

A Yes.

Q Who were the customers for whom any Synchronex shares were bought?

A 5000 shares were bought for a Mr. Merusi on orders from Mr. Yamada. Mr. Yamada told me to buy 3000 shares of Synchronex for Mr. Merusi.

Q Anybody else?

A Yes. And 1000 shares were purchased by a Mr.Geddes from Inverness Management.

Q For whom?

A For one of his accounts.

Q Do you know the name of the account?

A No, I don't, sir.

Q Was it John Winett?

MR. SILVERMAN: I object to Mr. Kelly supplying hin with the answer.

MR. KELLY: It is perfectly improper, but it simplifies simple evidentiary facts that are clear. It is just making it difficult,your Honor, to bring out facts which are really not open to question.

MR.SILVERMAN: One would have thought he spoke to his witness before.

MR. KELLY: I have done so many times.

THE COURT: We will take a recess.

(Recess.)

THE COURT: Before we proceed, counsel are directed to discontinue colloquy between yourselves. Either put the next question or reframe the one that it outstanding.

MR. KELLY: I will put the next question,your Honor.

Q Was an exception Visual Sciences?

A Yes.

Q How many shares were purchased?

A 500 shares.

Q Who placed the order?

A A Mr.Donald Geddes from Inverness Management.

Q With respect to any of those three securities and the four transactions, did you solicit these purchases?

A No.

Q Tell me whether in that period of time, 1969, until March of 1971, you kept and still have records from which you can tell the name of every security you purchased for every customer that you served?

A Yes, I did keep those records.

THE COURT: Now, let's see, every security purchased means, I gather, every security for which an order was placed by a customer through you.

THE WITNESS: Yes,sir.

THE COURT: And purchase orders by you. Would that be correct?

THE WITNESS: Yes. In other words, your Honor, any client of the firm who placed an order with me, I have a record of it.

Q Are these books that I have on this table the records to which you refer?

A Yes, they are.

Q Are those the only records maintained with respect to the security purchase and sales of customers that you servis that are maintained by you?

A No.

Q Will you describe the other records that you keep?

A Well, that set of records is what I call a cross reference.

Q From what?

A I don't understand.

Q This is a cross reference from other records?

A Right.

Q Describe the other records.

A Oh, the other records? The other records --

THE COURT: Before he does,can we mark -- or do you want these marked?

MR.KELLY: Your Honor, I intended to say to you when I finish this -- and I can do it just as well now -- that I did not intend to offer these.

THE COURT: So that we don't have to refer to them as "these," just give them some marking and then the record is complete as to what we are talking about. Put a tag on. Whether you offer them or not is not important at this time.

xxx (Defendants' Exhibit EEE was marked for identification.)

Q As I understand, Mr.Stott, you were saying, of the other records from which these are compiled were what?

A The other records, every client that I had or have, they are an account page, they have the client's name, they have the client's address, they have the client's phone number. That is at the top.

There are then lines and boxes next to these lines. In those lines I put the name of any security that I purchased for a particular client of the firm or any security that I sold for a particular client of the firm.

Q So those records are records which are kept indexed by the name of the customer?

A That is correct.

Q And these records compiled from those are indexed by the name of the security that was purchased or soldin the account that you serviced?

A Right.

MR. KELLY: Your Honor, I would like to describe the records marked as EEE for identification, as being four bound books, each one of which would approximately two to three inches thick. And on account of the fact that they are of that bulk and deal with so many things unrelated to this case, I do not on that account propose to offer them in evidence, although they are certainly available for the inspection of counsel if they wishto do so.

Q Was it from those records that you determined the instances in which Holobeam, Synchronex and Visual Sciences were purchased for others than Dr.Rolf?

A Yes.

THE COURT: Meaning from EEE for identification.

MR. KELLY: I did mean that, sir, yes.

Q Am I correct an answer has been given?

A You asked me if that is how I determined the --

Q The instances as respects Holobeam, Synchronex and Visual Sciences.

A Yes.

Q Did you hear the testimony of Mr. Yamada regarding a heated discussion at which, among other things, Mr. Yamada said that you said that you would tell Dr.Rolf about the poor quality of securities in his account unless you got more commissions.

A Yes.

Q Did you have such a discussion?

A No.

Q Did you ever tell Mr. Yamada that your superiors were displeased with the status of the account of Dr.Rolf?

A No.

Q Who would be the superiors --

THE COURT: One moment, please.

(Pause.)

THE COURT: All right, sir.

Q Will you identify the name of the person who would be your superior concerned with any deficiencies in the account of any of your customers?

A That would be a Mr. John Cione.

Q Did you ever tell Mr. Yamada that you intended to write to Dr. Rolf to get Eastman off the hookd because you were fearful of the stocks that Yamada was buying in theRolf account?

A No, I did not.

Q Did you ever recommend to Mr. Yamada that he purchase any of the following securities: Simplex Wire & Cable?

A Yes.

Q Standard Oil of New Jersey?

A Yes.

Q Reading & Bates?

A No.

Q Carter-Wallace?

A Yes.

Q Food Fair Properties?

A Yes.

THE COURT: Carter-Wallace, yes.

Food Fair, yes.

All right.

MR. KELLY: My understanding, your Honor, is Simplex yes, Standard Oil, yes; Reading & Bates, yes; Food Fair, yes; Carter-Wallace, yes.

Q Intertherm?

A Yes.

Q Equity Funding?

A No.

Q West Coast Production?

A Yes.

Q Natomes?

A No.

Q Teledyne?

A No.

Q International Funeral Services?

A No.

Q I would like to ask you to tell me whether or not five securities, of those I have just named, were recommendations of the research department of Bedco: Standard Oil of New Jersey?

A Yes, that was a recommendation.

Q Carter-Wallace?

A Yes.

Q Food Fair Properties?

A Yes.

Q Intertherm?

A Yes. That was an underwriting and we also recommended it.

MR.TESSLER: I am sorry, your Honor, the last part.

Q State that again.

A I believe the last one you asked me about was Intertherm, and I said yes. That was an underwriting of the firm, and after the required period of time I believe we came out with the writeup also.

Q West Coast Production?

A Yes.

Q Did you recommend directly to Dr.Rolf himself the purchase by him of any of these securities?

A No.

Q Were any of the following accounts, accounts that came to you by reason of the recommendation or action of Mr. Yamada: Competitive Associates?

MR. SILVERMAN: I object. May I state the basis, your Honor. He is trying to ask this witness what went on in Mr. Yamada's mind,trying to ask him is that why Mr. Yamada did something. And I don't think he can inquire from this witness the state of mind of another person.

THE COURT: You can restate the question in such a fashion as to elicit the answer, I dare say.

Reframe it.

Q Did there come a time when Competitive Associates became an account that was serviced and handled by you?

A Yes.

Q Who brought that account to you?

A Mr. Yamada.

Q Did there come a time when Takara became an account that was handled by you?

A Yes.

Q Who brought that account to you?

A Mr. Yamada.

Q Did there come a time when Armstrong became an account that was handled by you?

A Yes.

Q Who brought you that account?

A Mr. Yamada.

Q Did there come a time when an account of a Mr. Marusi became an account that was handled by you?

A Yes.

Q And who brought you that account?

A Mr. Yamada.

Q Did there come a time when there was an account that came to you of Neuwirth?

A Yes.

Q And who brought that account to you?

A Mr. Yamada.

Q Do you know of any other accounts that Mr. Yamad ever brought to you for you to handle?

A Not to my recollection.

Q With respect to Competitive Associates, will you tell me when that account was opened?

A I believe some time in 1969.

Q Do you know when?

A I would have to consult a record.

Q Have you got a record with you that you can consult?

A Yes.

Q Is this the record that you need to consult?

A Yes.

MR. KELLY: I will ask that it be marked for identification.

THE COURT: Mark it.

xxx (Defendants' Exhibit FFF was marked for identification.)

Q Can you tell me with respect to Competitive Associates when that account was opened?

A October of 1970.

Q During the period 1969 to March 1970, can you tell me what commissions were credited to you personally by reason of the transactions effected for this customer and also tell me what were the gross commissions that were received by the firm of Eastman Dillon.

MR. TESSLER: Your Honor, I would object to this information as being irrelevant. I think the relevant point has already been testified to that there were commissions received.

THE COURT: What is your purpose, Mr. Kelly?

MR. KELLY: There is charged in this complaint that Mr.Stott and the firm of Eastman Dillon, bargained for and received reciprocal brokerage commission, which I take to mean that it is suggested that the firm of Eastman

Dillon did something wrongful in return for commissions received by Mr. Yamada in other accounts. I wish to show what those accounts were and the amount that is involved with respect to commissions received.

THE COURT: So far, the testimony of Mr. Yamada has been that it was his understanding that any commissions which were received by Mr.Stott were small.

MR. KELLY: That is correct. And I am merely establishing that that is in fact true and correct.

THE COURT: All right. We don't know what "small"means. We will know after we get the answers.

MR. TESSLER: Your Honor, before you make that ruling, may I just point out that, while I certainly don't vouch for anything in the plaintiff's complaint in this action, I think Mr. Kelly misspoke when he said that the charge was that Mr.Stott and Bedco got commissions from these accounts in return for brokerage commissions received by Yamada from other accounts. And I don't think there is any such evidence. In fact, the evidence is to the contrary.

THE COURT: I will disregard that, but we will proceed with the question and answer here.

MR. TESSLER: Thank you, your Honor.

Q Can you answer the question?

A Could you repeat the question?

THE COURT: What was the amount of commissions earned? Is that the question?

Q Yes, one,by the firm as a whole, what I would call the gross commission, and what was received by you individually, which I would call the net commission. Do I use those terms correctly, Mr.Stott?

A That is correct, yes, sir.

Q Give the gross commission and give the net commission received during the entire duration of that account.

A Of Competitive?

Q Yes.

A The gross commission -- in other words, the commission that the firm received, was $653, and my portion of that was $150.

Q Can you tell me what the answer would be as to Takara as to when the account was opened?

A The Takara was opened at the end of July, 1969.

Q And what was the commission earned during the entire life of that account, gross and net?

A Well, on every one of these, I will give the gross first.

Q All right.

A The gross commission was $7632, and my portion of that, or net commission to me, was $1500.

Q When was the Armstrong account opened?

A In March of 1970.

Q And what were the gross and net commissions earned during the entire life of that account?

THE COURT: What month in '70?

THE WITNESS: I am sorry. March 1970, your Honor.

THE COURT: All right.

A The gross commissions were $7678, and the net commissions, my portion, was $1500, approximately.

Q When was the Marusi account opened?

A On May 5, 1969.

Q What was the gross and net commissions earned during the entire duration of that account?

A $11,111.

Q Gross?

A Gross commission, I am sorry. And the net commission, my portion was $4000.

Q Neuwirth, N-e-u-w-i-r-t-h. I guess I spelled that before.

A Neuwirth?

Q Yes.

A That was opened in July of 1969.

Q And what were the gross and net commissions earned during the entire life of that account?

A Approximately $2000 was the gross commission, and my portion of that would be $400.

Q Do you know what a box is?

A Well, I never heard the expression until I believe it was yesterday when it was used. No, I didn't know what it was until yesterday.

Q Did Mr. Yamada ever use that term in any discussions he has ever had with you?

A No.

Q Mr. Yamada made reference to certain people that you got to invest in Mr. Yamada's companies, and I would like to name those three people to you and ask you what do you know about them.

Mr. Joseph Picone.

A Mr. Joseph Picone -- I never met Mr. Picone. He was a client of Mr.Donald Geddes, and I never referred him to Mr. Yamada. I didn't know Mr. Picone.

Q John Levy.

A I never met Mr. Levy either. He was an account of Mr.Donald -- a client of Mr. Donald Geddes from Inverness

Management.

Q Dave Bolger.

A Mr.Bolger was an account of mine, a personal account of mine and a personal friend of mine, and I did not know that Mr.Bolger was an investor with Mr. Yamada in his hedge fund until some time in the middle of 1970. Mr.Bolger was referred to Mr. Yamada by Mr. Bolger's accountant, whose name I don't know.

MR. KELLY: I have no further questions, your Honor.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. SILVERMAN:

Q Mr.Stott, in your first conversation with Dr. Rolf, did he also askthat you recommend a partner of Eastman Dillon to handle his account?

A Not to my knowledge.

THE COURT: Excuse me, Mr.Silverman. I have two matters to follow, one of which I see is ready. Why don't we interrupt here, since you are just beginning.

MR. SILVERMAN: Can I just complete this, Judge?

THE COURT: All right, go ahead.

Q Do you recall appearing in my office for a deposition?

A Yes, I do, sir.

Q And do you recall that you were asked this question: Page 22, line 8.

MR. KELLY: Mr.Silverman, let us see if we can provide the witness with a copy.

MR. SILVERMAN: Surely. We have a copy (handing to the witness.)

Q Line 8 --

A Page 22?

Q Page 22, line 8.

"Q At any time that you acted as a registered representative for Dr.Rolf did you obtain any information as to Dr. Rolf's occupation, his income net worth investment objectives, etc.?

"A No, sir. When I got the statement I made the phone call and I know he asked me how long I had been in business and he said he had been dealing with the firm for four or five years or six or seven, I forgot what it was, and that he liked us, but that he would like to have a more sophisticated or person who had been in business longer or a person that was a partner in the firm, and that he was going to look for an investment advisor. So I never got a chance to getin a word."

Does that help to refresh your recollection as to whether Dr.Rolf in the first conversation asked for a partner?

A Well, yes it does, but I must have had that confused, because he was dealing with a partner prior to talking to me. In our firm, sir, nobody in our firm is allowed to have discretionary accounts. Mr.Sterling was an exception to that rule, because he had been doing it for so long that he was an exception to the rule.

MR. SILVERMAN: Thank you, your Honor, for allowing me.

THE COURT: Step down.

MR. TESSLER: Your Honor, in one minute, I think Mr.Silverman has a statement to make which I would appreciate if your Honor would permit it to be made now.

THE COURT: All right.

MR. SILVERMAN: Yes, your Honor. I did enter into an agreement with Mr. Tessler concerning a dismissal without prejudice of plaintiff's action against Mr. Yamada, on the terms and conditions set forth in Plaintiff's Exhibit 19. I believe that each and every condition set forth in that stipulation has been met by Mr. Yamada, namely, that he testified fully and truthfully and responsively, and I am ready, of course, to live up to my part of the agreement, Your Honor mentioned that you needed to so order that stipulation, and I wonder if we can't present it to your Honor to have it so ordered. Or would your Honor prefer that we present you with a separate stipulation?

THE COURT: No. I don't know that that is necessary. Of course, that will not extract Mr. Yamada from the case.

MR. TESSLER: Absolutely not,your Honor.

THE COURT: Is there any reason that anyone has to advance as to why this should not be so ordered at this time?

MR. KELLY: In my opinion, your Honor, the decision should be deferred until the trial of the case has been completed. I can't give you a good reason why that should or should not be so, except that one does not know the future in what might or might not occur.

THE COURT: All right.

MR. KELLY: I do not personally believe --

THE COURT: I think I will reserve decision on it until the end of the entire case. I see no particular harm to doing that, especially since Mr. Yamada is going to be in the case until the very end in any event.

So I will reserve decision that.

MR. TESSLER: Thank you,your Honor.

THE COURT: Now, we will resume on Monday morning at 9:30.

Step down , sir.

(Witness excused.)

THE COURT: Good day.

MR. KELLY: Your Honor, I just heard something. It will be easier if Mr.Stott would state generally what he was just saying to me.

MR. STOTT: Your Honor, on Saturday morning we take the children away for a month down to South Carolina, and it takes two days to drive down there, and I would have to get -- I would get a 7:15 plane, that is the first plane on Monday morning from Savannah, which I could probably be in the courtroom somewhere around 10:30 or 11:00 o'clock.

THE COURT: On Monday?

MR. STOTT: Yes.

THE COURT: All right.

MR. STOTT: I don't know exactly what time that plane gets in, sir.

THE COURT: 10:30?

MR. STOTT: That is my guess. I have never done it before. But I have to drive Saturday and Sunday, it is a two-day drive, down to Savannah, outside of Savannah, and then what I have to do is get up at five o'clock in the morning on Monday to get the first plane out. There is a plane Sunday night, but I don't think I will be arriving there in time to get it back.

THE COURT: So what is the request?

MR. KELLY: Mr.Cione says, he travels quite a bit, --

MR. CIONE: It is approximately a two hour flight into Kennedy. If it is a 7:15 flight,you should be back at 9:30 in the airport and 10:30 here.

MR. STOTT: Your Honor, I can make a phone call, my secretary can tell me immediately and I will be right back in the court.

THE COURT: We will assume at the moment that you can make it at 10:30.

MR. STOTT: If I am a little late --

THE COURT: Well, we will see.

MR. STOTT: Thank you, your Honor.

(Adjourned to Monday, July 12, 1976, at 10;30 A.M.)
